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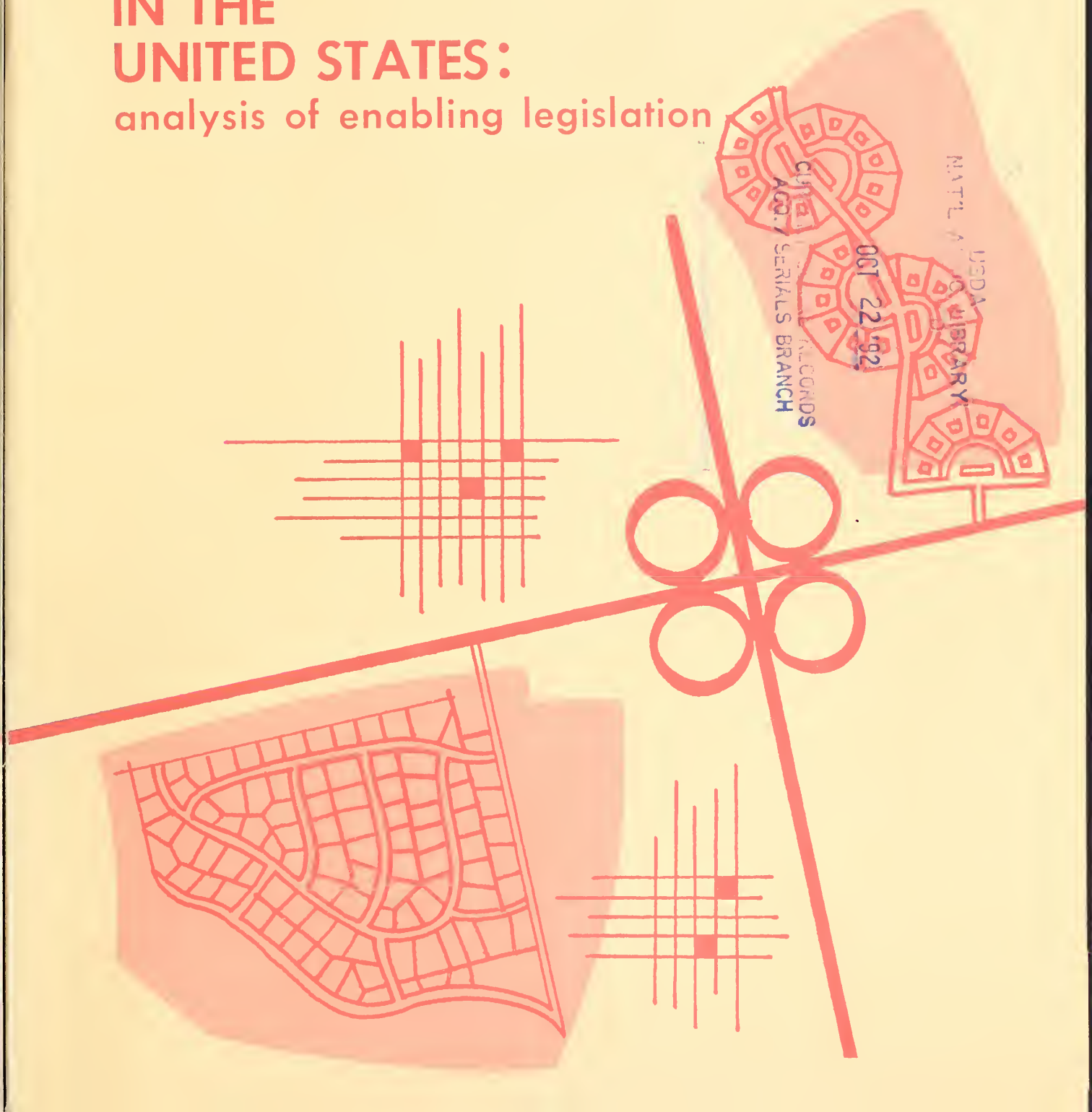
RURAL ZONING IN THE UNITED STATES:

analysis of enabling legislation



ABSTRACT

This publication summarizes the main provisions of current enabling statutes that authorize zoning in rural or unincorporated areas in the United States. Substantive rather than procedural law is emphasized. Major amendments and zoning innovations adopted in 1969-70 also are analyzed, including innovations that foreshadow future types of zoning districts and regulations at nonlocal levels of government, especially in rural areas. The authority to apply zoning regulations in the urban fringe and open country is examined. Of major concern are zoning powers that have been granted for protection of rural values--agriculture, soil and water, forests, fish and wildlife, recreational and scenic attractions, and related resources. An increasing number of nonrural governmental agencies--State, municipal, intrastate, and interstate--are empowered to zone rural problem areas.

Keywords: Zoning, rural zoning, rural zoning enabling laws, planning and zoning, farm zoning districts, agricultural zoning exemptions, urban-agricultural conflicts, conservation zones, zoning by State, zoning by regional agencies.

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HIGHLIGHTS

Zoning of unincorporated or rural areas is authorized in all 50 States and in more than three-fourths of the 3,000 counties in the United States. The number and kinds of governmental units empowered to zone and the areas each may zone vary by State. Generally, the local governments authorized to zone are all or selected counties in the South and West, all or selected towns or townships in the Northeast, and both counties and towns or townships in most Lake States. Where zoning is authorized at two or more levels, the zoning regulations, if any, are usually applied by the lower level of government.

Zoning to protect agriculture is at the State level in Hawaii. Prime agricultural lands are placed in agricultural zoning districts, and forest and watershed lands in conservation districts. Also, Hawaiian law requires zoned property to be assessed for taxation with consideration given to permitted uses as well as present use.

State agencies are empowered to zone flood plains in Iowa and Minnesota, coastal wetlands in Rhode Island, unorganized boroughs in Alaska, shorelands in Minnesota and Vermont, and flood plains and shorelands in Wisconsin. The State highway commission in Mississippi is empowered to establish and enforce setback regulations. Similar State agencies in Louisiana, Maryland, Minnesota, Montana, Oklahoma, and Wisconsin are authorized to zone certain roadsides. Selected roadsides are zoned by the legislature in South Dakota.

Any land not zoned by a local government could be zoned by the Governor of Oregon after December 31, 1971. In Maine, a land use control commission is empowered to provide planning, zoning, and subdivision regulations in unorganized townships for all areas located within 500 feet of the edge of public roads and within 500 feet of shorelines of certain classes of lakes and ponds.

Open space land, under one classification in a Washington State differential assessment and tax law, must be so designated in an adopted city or county land use plan, and zoned accordingly.

In 17 States, selected cities and towns are empowered to zone adjacent areas outside their boundaries.

Some States provide for regional planning and certain implementing measures at the regional level to prevent urban sprawl, to provide major areas of open space, and to protect the agricultural base of local processing industries and service trades. In North Dakota, metropolitan or joint planning commissions may be empowered to zone the planning area by agreement between local governments. Additional legal precedent for zoning by regional, metropolitanwide, and interstate regional agencies is provided by recent enabling legislation in California and Nevada. In each of these States, a provisional interstate regional agency was authorized and empowered to prepare plans for, and to adopt and administer, zoning, subdivision, and related regulatory measures for the Lake Tahoe Basin, which comprises parts of two counties in California and parts of three counties in Nevada. These two interstate regional agencies were soon superseded by an interstate regional agency, following adoption and ratification of a compact. This agency has comprehensive planning and regulatory jurisdiction over the entire basin.

The State legislatures are the sources of zoning powers. When granting these powers, the legislatures usually indicate the objectives that local governments may seek to attain through zoning. Of increasing importance are orderly growth, conserving and developing natural resources, preserving historic and scenic attractions, and fostering agriculture and other industry. Rural zoning statutes also permit exercise of use, building-tract (area), building-size, and population-density regulations to attain community objectives. For example, use regulations enable a community to establish separate zoning districts for homes, business, or industry, as well as districts for agriculture, forestry, recreation, flood control, conservation, or other purposes.

Zoning enabling laws in a score of States exempt agriculture from zoning regulations. The exemption does not preclude creation of agricultural zoning districts in which nonfarm uses are restricted or excluded. A few enabling statutes confer express authority to create exclusive-type agricultural zoning districts for farming and related uses only. Similarly, a few statutes confer express power to establish exclusive-type districts for industry or business only.

Zoning enabling statutes in Hawaii and Minnesota empower local governments to prescribe both minimum- and maximum-lot or tract sizes. In several States, minimum-tract sizes may be voided by the courts if tracts would be too large in areas of residential growth on the urban fringe. However, the same minimum size is permitted in exclusively agricultural zoning districts; and the range can be from 5 to 80 acres or more.

Zoning innovations authorized by Connecticut, Indiana, Kansas, Kentucky, New Jersey, Pennsylvania, and Vermont legislatures allow flexibility in grouping residential buildings and open spaces to fit natural and topographic features of the area under development. The aim in planned residential development, cluster zoning, and layout is to give greater variety and amenity and less soil erosion and urban sprawl.

A half-dozen statutes authorize zoning regulations requiring that automobile graveyards and junkyards be screened from view. Other statutes permit creation of historic zoning districts to safeguard and promote educational and recreational aspects of historic areas.

Some State legislatures have been slow to grant their rural governments any or adequate zoning powers. Other legislatures have failed either to update zoning enabling statutes to keep pace with regulatory needs of rural governments or to allow use of new zoning techniques.

RURAL ZONING IN THE UNITED STATES: ANALYSIS OF ENABLING LEGISLATION

By

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and
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CHAPTER I.--INTRODUCTION

RECENT INNOVATIONS AND TRENDS IN ZONING ENABLING LAWS

The past two decades have brought major changes in rural America. Changes have also occurred in State enabling statutes which authorize zoning in rural and unincorporated areas. These laws are being reshaped, sometimes belatedly, to permit more suitable and effective zoning in the changing rural environment.

Text and tables following this section reflect State zoning enabling statutes as of December 31, 1968. In this section, however, both the major amendments and the outstanding zoning enabling statutes passed by State legislatures in 1969 and 1970 are summarized briefly. Minor amendments to the enabling statutes are not reported in this section.

Earlier trends observed in rural zoning enabling laws continued into 1969-70. More State agencies were granted power to zone roadsides, flood plains, and miscellaneous other areas; more municipalities were empowered to zone outside their boundaries; more counties and other rural governments were granted power to approve planned unit and cluster developments; and certain regional planning agencies were empowered to zone specified areas (see figure).

Some Notable Revisions

During the late 1960's, major overhauling of county zoning enabling statutes occurred in legislative sessions in Florida, Indiana, and West Virginia. In Florida, a new enabling statute that permits local option zoning applies in each county where authorized by referendum and adopted by the board of county commissioners. Florida's local zoning enabling laws remain unaffected. 2/ The Indiana legislature rewrote its zoning enabling law for counties having a city of the first class. 3/ A more comprehensive revision of county planning,

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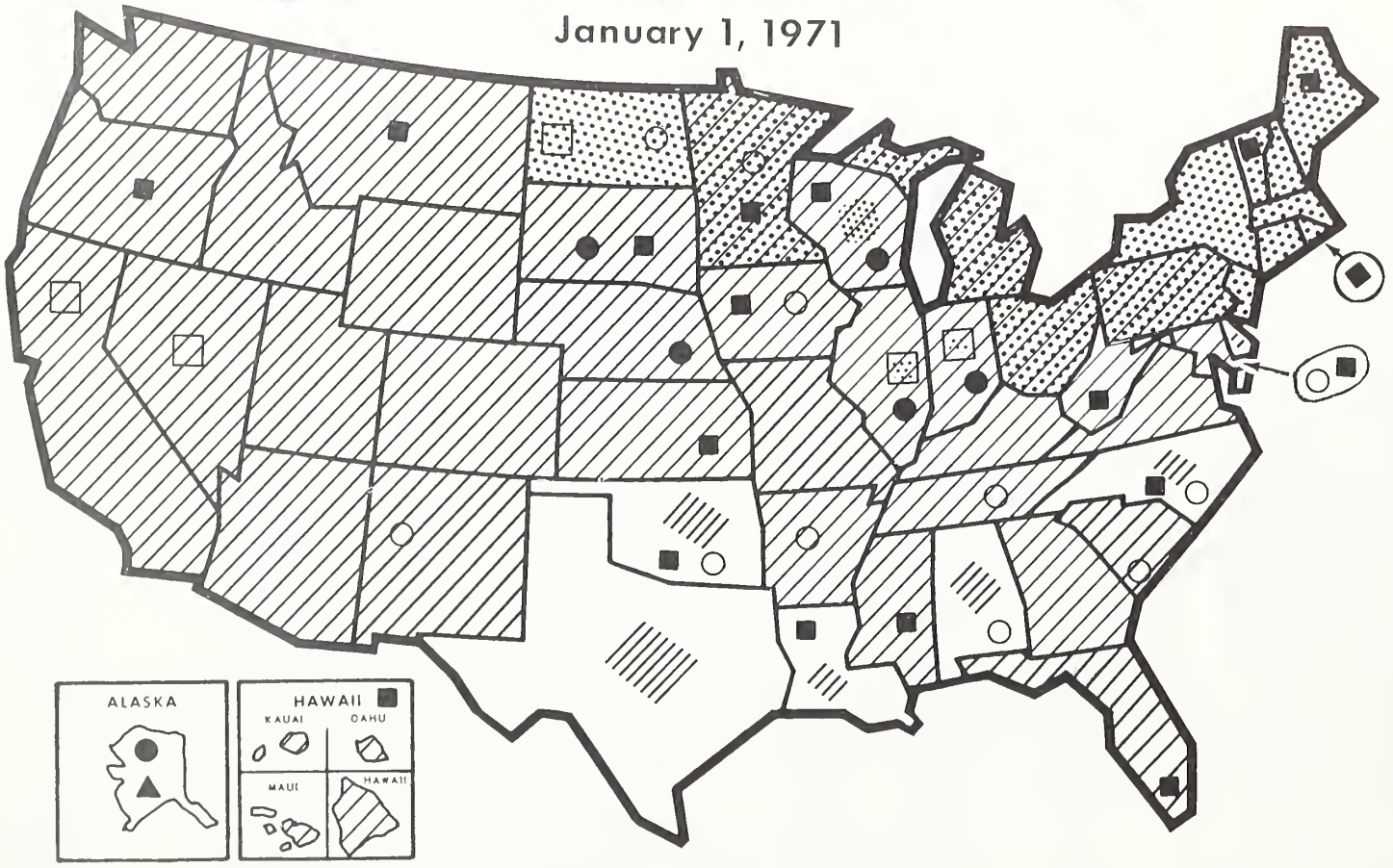
1/ The authors were employed in the Natural Resource Economics Division, Economic Research Service, U.S. Department of Agriculture. Solberg, who is retired, was trained in both law and economics and is a member of the Washington State Bar Association.

2/ Fla. Stat. Ann. §§ 133.01 to 133.19 (Supp. 1970) -- Fla. Law 1967, ch. 67-310; 1969, ch. 69-119.

3/ Ind. Ann. Stat. §§ 53-901 to 53-982a (Burns 1964 and Supp. 1969)-- Ind. Acts 1969, ch. 299. Enabling statute applies to Marion County, Ind., only. Classifications of cities and counties differs from State to State.

RURAL ZONING ENABLING LEGISLATION

January 1, 1971



EMPOWERED TO ZONE

- All counties
- Selected or classes of counties
- All towns or townships
- Selected towns or townships
- Regional planning ogencies
- Any city, extraterritorially
- Selected cities, extraterritoriolly
- Specified Stote ogencies
- Orgonized boroughs

SOURCE OF DATA: APPENDIX TABLE 2, CHAPTER 1.

U. S. DEPARTMENT OF AGRICULTURE

NEG. ERS 3145-72 (2) ECONOMIC RESEARCH SERVICE

zoning, subdivision, and related enabling legislation occurred in West Virginia. 4/ That State also authorized interstate compacts involving one or more counties or cities or both for planning purposes. 5/

South Carolina and Vermont authorized their rural governments to create historic and design-control zoning districts. 6/

The trend toward extraterritorial zoning continues. Iowa and Minnesota 7/ can now be added to the 15 States that have authorized selected municipalities to zone specified areas bordering but outside of corporate boundaries. 8/

Older, more rigid rural zoning enabling statutes continue to be changed to meet urgent demands of rampant suburban growth. Enabling statutes in Connecticut, Kansas, and New Jersey 9/ authorize rural units of government to adopt ordinances setting forth regulations for planning, construction, and operation of planned unit and cluster developments. Descriptive summaries of comparable enabling statutes in Indiana, Vermont, and Pennsylvania are included below. 10/

Several possibly precursory statutes deserve brief mention. Local governments in Vermont are empowered to establish certain types of zoning districts. The purposes of these districts are to safeguard certain areas from urban and suburban development and to encourage development in other areas. The following types of zoning districts are authorized:

1. Agricultural and residential districts that permit only agricultural uses and nonfarm residences on lots of not less than 25 acres;

2. Forestry districts that permit only commercial forestry and related uses; and

3. Recreational districts that permit only camps; ski areas; and related recreational facilities, including lodging for transients and seasonal residents and residences for caretakers. 11/

4/ W. Va. Stat. Ann. §§ 8-24-39 to 8-24-71 (1969)--W. Va. Laws 1969, ch. 86.

5/ W. Va. Laws 1968, ch. 29, p. 1496.

6/ S. C. Code, §§ 47-1020 to 4720.3 (1962 and Supp. 1970) -- S. C. Laws 1968, No. 1002, p. 2404. Vt. Laws 1969, No. 116. See section "Historic and Other Districts" in chapter VI for a discussion of comparable statutes in other States.

7/ Iowa Laws 1970, ch. 1192. Minn. Stat. Ann. §§ 462.357 (1963 and Supp. 1970) -- Minn. Laws 1969, ch. 259.

8/ See section "Extraterritorial Zoning" in chapter II and appendix II for discussion and legal citations of similar laws in other States.

9/ Conn. Gen. Stat. Rev., ch. 124a, §§ 8-13b to 8-13k, (1966 and Supp. 1969)--Conn. Laws 1969, P.A. 764. Kan. Gen. Stat. Ann., §§ 12-725 to 12-733 (1964 and Supp. 1969)--Kan. Laws 1969, ch. 75. N. J. Rev. Stat. Ann., §§ 40:55-54 to 40:55-67 (1967 and Supp. 1970)--N. J. Laws 1967, ch. 61 and ch. 2866, § 8.

10/ See section "Planned Residential Development" in chapter VI.

11/ Vt. Stat. Ann., tit. 24, § 4407 (1967 and Supp. 1970-71).

A restraining influence on the indiscreet use of conditional zoning is suggested by a Maryland law applying in Calvert County. Any land that is rezoned "upon the fulfillment of a condition" reverts back to its original classification if the condition is not fulfilled within 24 months. 12/

Another notable revision of zoning legislation occurred in Wyoming. The municipality's board of adjustments is authorized to grant the violator an exception or variance if a zoning violation has existed for at least 5 years and no zoning enforcement steps have been taken. 13/

In 1968, Louisiana, which grants zoning power to individual parishes, added Ascension, De Sota, Sabine, and Vernon parishes to the 11 of 62 parishes previously authorized to zone. 14/

State Zoning of Roadsides and Flood Plains

The trend toward State zoning continues. 15/ In 1967-70, a dozen legislatures conferred power on selected State agencies to zone designated areas. Three types of areas are involved--roadsides, flood plains and shorelands, and areas where State interests are large.

New enabling laws in Maryland, Minnesota, Montana, and Oklahoma empower State road commissions, or their equivalent, to regulate and restrict outdoor advertising on roadsides extending 660 feet from the center line of interstate highways. 16/ The laws vary considerably as to scope of regulations authorized and segments of roadsides excepted. Unless local zoning regulates outdoor advertising in Maryland, the State regulations prevail. 17/

Several recent enabling statutes were designed to effect more appropriate use of water-bordered land. 18/ In Minnesota, the commissioner of conservation can adopt ordinances regulating the conservation of shoreland without needing approval of the town concerned. The town, however, may adopt more restrictive regulations. 19/ In Vermont, after June 1, 1972, the State water resources board may zone shoreland if municipalities have failed to act or if existent

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12/ Md. Ann. Code, art. 66B, tit. 2, § 21(m), (1969 Cum. Supp.)--Md. Laws 1969, ch. 38b.

13/ Wyo. Stat. Ann. § 15.1-89(4) (1957).

14/ La. Acts 1968 (Reg. sess.), Act No. 516 and Act No. 573.

15/ See section "Zoning by the State" in chapter II for earlier enabling legislation.

16/ Minn. Stat. Ann., §§ 173.01 to 173.54 (1960 and Supp. 1970)--Minn. Laws 1965, ch. 828. Mont. Rev. Codes Ann., §§ 32-4701 to 32-4714 (1947 and Supp. 1969)--Mont. Laws 1967, ch. 287. Okla. Stat. Ann. tit. 69, §§ 1271 to 1285 (1969 and Supp. 1970-1971)--Okla. Laws 1968, ch. 191; 1970, ch. 10.

17/ Md. Ann. Code, art. 89B, §§ 256 to 262 (1961 ed.)--Md. Laws 1968, ch. 589.

18/ See sections "Zoning by the State" and "Park and Water Frontages" in chapter II for earlier examples.

19/ Minn. Stat. Ann., §§ 396.01 to 396.21 (1968 and Supp. 1970)--Minn. Laws 1969, ch. 777.

zoning fails to meet minimum standards. Similarly, if the municipality fails to administer the local bylaw, the State board may administer it and charge expenses against the municipality. 20/

The State conservation commission in Iowa was authorized in 1970 to designate "natural rivers" to be preserved. A "natural river" is defined as a river, stream, or portion thereof, which possesses outstanding water conservation, scenic, fish, wildlife, historic, or recreational values. The commission is empowered to assist local governments in framing regulations for zoning areas adjacent to natural rivers and in enforcing the regulations. 21/

Continued legislative concern about use of the flood plain is reflected in two recent zoning enabling statutes. In a Minnesota act, the commissioner of conservation must approve of any flood plain zoning ordinance adopted by a local government after June 30, 1970. 22/ In Texas, on the other hand, flood plain zoning powers are widely dispersed. Any political subdivision is empowered to adopt and enforce permanent land use and control measures consistent with the National Flood Insurance Act. 23/ A "political subdivision" is defined to include any county, river authority, conservation and reclamation district, water control and improvement district, water control and preservation district, fresh water supply district, irrigation district; any comparable district previously or later created; or any interstate compact commission. 24/

State Zoning of Other Problem Areas

Four statutes besides those already discussed authorize zoning by State agencies. In 1970, the legislature of Oklahoma created the "capitol-medical center improvement and zoning district" which embraces areas around the State capitol building and the medical center. An administrating commission was created and given powers to adopt a comprehensive plan and a zoning ordinance. Two separate earlier districts and related commissions for each of the two areas were abolished. 25/ A comparable statute adopted in 1969 in Minnesota created a capitol area architectural and planning commission. The commission was authorized to prepare a comprehensive plan for the capitol area and to limit by zoning regulations the kind, character, or height of a building constructed or used in the area and extending 300 feet outside area boundaries. 26/

20/ Vt. Laws 1969, No. 281.

21/ Iowa Laws 1970, ch. 1062.

22/ Minn. Stat. Ann., §§ 104.01 to 104.07 (1964 and Supp. 1970)--Minn. Laws 1969, ch. 1129.

23/ National Flood Insurance Act of 1968, Public Law 90-448, 90th Cong. (82 Stat. 572).

24/ Tex. Rev. Civ. Stat. art. 8280-13 (1954 and Supp. 1970-71)--Tex. Laws 1969, ch. 782.

25/ Okla. Stat. Ann. tit. 73, §§ 82.1 to 83.11 (1965 and Supp. 1970-71)--Okla. Laws 1970, ch. 327.

26/ Minn. Stat. Ann. § 15.50 (1967 and Supp. 1970)--Minn. Laws 1969, ch. 1150.

Oregon

The failure of many Oregon counties to plan and zone appears to have prompted the State to provide for local planning and zoning. If, after December 31, 1971, any land in any county or city is not subject to a comprehensive land use plan and zoning ordinance, the Governor is to prescribe such plan and ordinance. Among many of the planning goals are preventing flood damage, conserving prime farmland for agriculture, and effecting an orderly transition from rural to urban land use. The Governor's plan and zoning regulations are ineffective during the time local government plans and ordinances are in effect. 27/

Maine

Concerned over haphazard growth, pollution of land, air, and water, and the threat of ecological imbalance, Maine legislators have extended planning, zoning and subdivision control to unorganized and deorganized townships and mainland plantations. The Maine Land Use Control Commission was set up with three permanent and four appointive members and is authorized to administer the planning and control programs. The commission's geographic jurisdiction is limited to (1) lands located within 500 feet of the traveled edges of any public roads; (2) lands within 500 feet of the normal shoreline of any lake or pond, except remote lakes and ponds (over 1 mile from a public road); and (3) the surface waters of any lake or pond of less than 640 acres, unless the lake or pond is remote.

Zoning measures adopted by the commission may regulate the following:

1. Location and use of real estate for agricultural, industrial, commercial, forestry, recreational, residential, and other purposes;

2. Type of construction, height, width, minimum floor area, and bulk of all structures;

3. Size, depth, and width of lots, minimum open space, and areas not built on;

4. Setback of structures along public roads and shores of lakes or ponds, unless the lakes or ponds are remote; and

5. Use of boats and size of outboard motors on lakes and ponds of less than 640 acres, unless the lakes or ponds are remote.

Broadly construed, subdivision controls authorize regulation of such factors as structural design, building location, building materials, utilities, drainage, pollution control, water supply, lot sizes, road location, boat and automobile parking arrangements, and other improvements. Residential lots in unsewered areas must contain at least 20,000 square feet, unless smaller lots are approved

27/ Ore. Rev. Stat. §§ 215.505-215.535 (1969)--Ore. Laws 1969, ch. 324.

after favorable percolation tests by the State department of health and welfare. State subdivision regulations remain in effect after annexation, until replaced by municipal controls. 28/

Influencing Land Use Through the Taxing Power

Zoning is only one technique available to local governments for influencing land use. Another way is through the taxing power. Nearly half the States have enacted enabling statutes which direct their counties to provide for differential assessments and taxation of certain classes of rural land.

A far-reaching differential assessment and tax law, effective January 1, 1971, was enacted in Washington State in 1970. 29/ Purposes of the law are to further the preservation of open spaces for food, fiber, and forest crop production and to assure enjoyment of natural resources and scenic beauty. Three classes of land are included--open space land, farm and agricultural land, and timberland.

"Open space land" is defined in this law as any land area so designated in an adopted city or county land use plan, which has been zoned accordingly. Or open space land can be any land area whose preservation in its present use would achieve any of the following:

1. Conservation and enhancing of natural or scenic resources;

2. Protection of streams or water supply;

3. Conservation of soils, wetlands, beaches, or tidal marshes;

4. Enhancing of value to the public of abutting or neighboring parks, forests, wildlife preserves, natural reservations or sanctuaries, or other open space;

5. Enhancing of recreational opportunities;

6. Preservation of historic sites; or

7. Retention in the natural state of tracts 5 acres or more in size in an urban area--tracts that are open to public use on conditions prescribed by the local legislative body.

"Farm or agricultural land" is defined in the Washington law as tracts of 20 acres or more devoted primarily to agriculture, tracts of 5 to 20 acres which produce an annual gross income from agriculture of $100 per acre, or tracts of less than 5 acres which produced $1,000 per acre in 3 of the 5 preceding years.

28/ Me. Rev. Stat. Ann. ch. 12, §§ 681-689 (Supp. 1970-71)--Maine Laws 1969, ch. 494.

29/ Wash. Laws 1970, ch. 87.

"Timberland" is defined in the Washington law as land of 20 or more acres, which is in contiguous ownership and is devoted primarily to the growth and harvest of forest crops. Timberland means the land only, not the trees.

An owner desiring classification of land for assessment based on land use applies to the county assessor on prescribed forms. Each application, depending on the land's location, is referred to either the county or city legislative body. In making its decision, the local legislative body is instructed to consider whether preservation of the land in its current use will further the objectives set forth in the definitions of open space land, farm and agricultural land, and timberland. The legislative body may approve differential assessment for only part of the land and may attach conditions, including the granting of an easement. The decision is a legislative determination that is reviewable by the courts only to see if arbitrary and capricious action has occurred.

Each year, the assessor is instructed to compute both the value of the land in its classified current use and its value were it not so classified, and to note these values on the assessment list and tax roll. The county treasurer records both values in the manner provided for recording delinquent taxes.

Land once classified remains under the same classification for 10 years, according to the Washington law, but requests for withdrawal may be made after 7 years. Three assessment years after such a request, the county assessor withdraws the land. At that time, the county treasurer imposes and collects a rollback tax for the preceding 7 years in an amount equal to the difference between the tax actually paid and the tax that would have been paid had the land not been classified, plus interest at the statutory rate charged on delinquent taxes.

In case a change in use of classified land occurs, except when the land is legally withdrawn or acquired by a public body, an additional real property tax is imposed. This tax is equivalent to the sum of the difference between the tax paid and the tax otherwise payable on the land had it remained unclassified during a maximum of 20 years for timberland and 14 years for open space land and farm land; plus a penalty of 20 percent of the additional tax; plus interest on the additional tax and penalty at the rate charged on delinquent property taxes from the dates on which the additional taxes could have been paid without penalty each year. The additional tax, penalties, and interest are a lien on the applicable land.

Zoning by Regional Agencies

Although metropolitan growth has engendered widespread planning by regional agencies, they seldom receive authority to administer zoning and related land use regulations. One exception is a 1963 enabling law in North Dakota which empowers metropolitan or joint planning commissions to plan and zone the planning area on agreement between local governments. 30/

30/ N. D. Cent. Code §§ 54-34.1-01 to 54-34.1-15 (Supp. 1967)--N. Dak. Laws 1963, ch. 351.

Much broader regulatory powers for the Lake Tahoe Basin were conferred by enabling laws recently adopted in California and Nevada. A package of powers was granted. Each State authorized creation of provisional State regional planning agencies, which would be superseded by a Tahoe [Interstate] Regional Planning Agency after approval of an interstate compact. The legislatures of both States found that:

1. The waters, other resources, natural beauty, and economic productivity of the region were being threatened;

2. The region was experiencing problems of resource use and deficiencies of environmental control;

3. There was a need to maintain an equilibrium between the region's natural endowment and its manmade environment; and

4. It was thus imperative to establish an areawide planning agency, with power to adopt and enforce a regional plan of resource conservation and orderly development.

Nevada Tahoe Regional Planning Agency

The Nevada Tahoe Regional Planning Agency was created as a separate legal entity and endowed with very broad powers, including power to prepare and adopt interim plan pending preparation and adoption of a regional or general plan for the development of the region. 31/ The Nevada region contains Lake Tahoe and the adjacent parts of Carson City and Douglas and Washoe Counties lying within the Tahoe Basin. The Nevada agency is governed by a board comprised of three members appointed by the supervisors of each of the two counties and Carson City, a resident of the region appointed by the Governor, and a representative of the Nevada Department of Conservation and Natural Resources.

The regional planning act requires the regional agency to appoint an advisory planning commission comprised of (but not limited to) the planning directors of the two counties and Carson City; the health officer (or his designee) of each county; the chief (or his designee) of the bureau of environmental health; at least two resident lay members of the region; and the executive officer of the regional agency, who is designated to act as chairman.

The agency's governing body is empowered to appoint and fix the salary of the executive officer and may employ a staff and legal counsel. The advisory planning commission is authorized to prepare plans and amendments to them; hold public hearings; review testimony; and submit proposed plans or amendments to these, with recommendations, to the agency's governing body. This body may adopt, modify, or reject the proposals. If a proposal is substantially modified, a new public hearing is required. A regional plan must be recommended within 9 months and adopted within 12 months after formation of the regional agency. However, an interim plan must be recommended within 60 days and adopted within 90 days after formation of the agency.

31/ Nev. Rev. Stat. §§ 278.702 to 278.770 (1969)--Nev. Laws 1969, ch. 52, pp. 44-55.

The regional plan is to include the following correlated elements:

1. A land use plan for the integrated arrangement of, general location and extent of, and the criteria and standards for, the uses of land, water, air, space, and other natural resources within the region. The plan is to include but not be limited to an indication or allocation of maximum population densities;

2. A transportation plan for the integrated development of a regional system of transportation. The plan is to include but not be limited to freeways, parkways, highways, transportation facilities, transit routes, waterways, navigation and aviation aids and facilities, and related terminals and facilities for the movement of people and goods within the region;

3. A conservation plan for the preservation, development, utilization, and management of scenic and other natural resources within the basin. The plan is to include but not be limited to soils, shoreline and submerged lands, scenic corridors along transportation routes, open spaces, and recreational and historical facilities;

4. A recreation plan for the development, utilization, and management of recreational resources of the region. The plan is to include but not be limited to wilderness and forested lands, parks and parkways, riding and hiking trails, beaches and playgrounds, marinas, and other recreational facilities; and

5. A public services and facilities plan for the general location, scale, and provision of public services and facilities, which, by their function, size, extent, and other characteristics, are necessary or appropriate for inclusion in the regional plan.

In formulating the regional plan, the advisory planning commission and the governing body are instructed to seek to harmonize their planning activities with those of counties, cities, and State, Federal, and other public and non-public agencies which affect development within the region. Public works proposed for construction within the region must be submitted to the regional agency for review and recommendation as to conformity with the regional plan and, except for State projects, may not be constructed unless approved by the agency.

The governing body is empowered to adopt all necessary ordinances, rules, regulations, and policies to effect the adopted regional and interim plans. Implementing or regulatory measures are to establish minimum standards applicable throughout the basin, but any local government may adopt equal or more restrictive measures.

The regulations are to contain general regional standards. These are to include but not be limited to the following: water purity and clarity; subdivision control; zoning; tree removal; solid waste disposal; sewage disposal; land fills, excavations, cuts, and grading; piers, harbors, breakwaters, channels, and other shoreline developments; waste disposal in shoreline areas

and from boats; mobile-home parks; house relocation; outdoor advertising; flood plain protection; soil and sedimentation control; air pollution; and watershed protection.

Whenever possible, without jeopardizing regional plans, the regulatory measures will have regional application. Local governments are to enact specific and local measures which conform to the regional plans.

The regional agency may police the region to ensure compliance with regional plans and implementing measures. Enforcement will be by the agency and by local governments. If regional plans and implementing measures are not being enforced by local governments, the agency may bring legal action to ensure compliance. Violation of any agency ordinance is a misdemeanor.

The regional agency may receive gifts, donations, subventions, grants, and other financial aids and funds. It may fix and collect reasonable fees for any services rendered. The agency is deemed a local government for purposes of the local government budget act.

The Nevada Tahoe Regional Planning Act expires by limitation when California and Nevada convene the governing body of the interstate regional agency, but the act is revived if either State withdraws from the compact.

California Tahoe Regional Planning Agency

An enabling statute in California comparable to the one in Nevada created a parallel agency--the California Tahoe Regional Planning Agency--as a separate legal entity and political subdivision of the State. 32/ The geographic jurisdiction of this agency contains the part of Lake Tahoe within California, parts of El Dorado and Placer Counties within the Tahoe Basin, plus a designated additional and adjacent part of Placer County outside the Basin.

The governing body of the regional agency is comprised of one supervisor, who is a resident of the region and is appointed by the county boards involved; a councilman from the City of South Lake Tahoe, appointed by its council; a resident of the basin appointed by the Governor, subject to senate confirmation; and the administrator of the California Resources Agency, or his designee.

As in Nevada, the California regional agency is empowered to appoint a technical advisory committee; to review and adopt an interim plan; and to prepare, adopt, and review a long-term regional plan, comprised of land use, transportation, conservation, recreation, and public service and facilities plans. Also, as in Nevada, the agency is granted broad regulatory and enforcement powers. Annually, it is to prepare a budget and apportion the sum needed between the two counties, which are to levy the required taxes.

32/ Cal. Gov't. Code Ann. tit. 7.5, §§ 67000 to 67130 (West 1966 and Supp. 1970)--Cal. Stats. 1967, ch. 1589; 1968, ch. 988.

Tahoe [Interstate] Regional Planning Agency

Both the California and the Nevada Tahoe regional planning agency acts expire by limitation when the Congress ratifies the Tahoe regional planning compact and the Governors of the two States convene the Tahoe [Interstate] Regional Planning Agency. The acts are revived if either State withdraws from the compact. The compact has been adopted by both California and Nevada and ratified by the Congress. 33/ Its provisions are set forth in essentially similar acts enacted by each State and by the Congress.

The region to be administered by the interstate agency consists of Lake Tahoe and adjacent parts of five counties lying within the Tahoe Basin (Douglas, Ormsby, and Washoe Counties in Nevada; Placer and El Dorado Counties in California), plus an additional part of Placer County outside the basin. The acts of both States provide for the creation of the Tahoe [Interstate] Regional Planning Agency as a separate legal agency.

The governing body of the agency is to consist of a member appointed by each of the county boards of the five counties; an appointee of the South Lake Tahoe City Council; an appointee by each Governor; the administrator of the California Resource Agency, or his designee; and the director of the Nevada Department of Natural Resources, or his designee. The California city and county appointees must be members of their respective governing boards. Moreover, the county appointees must reside in a supervisory district which is wholly or partly within the region. The Nevada county appointees may be either (1) members of their appointing boards or (2) residents or real property owners in the region. Before taking office, these appointees must disclose their economic interest within the region; thereafter, they must disclose, as soon as feasible, any economic interest which they acquire. The governing body is to meet regularly and at least monthly. All meetings are to be open to the public. A majority of the members from each State constitutes a quorum.

The interstate agency is to appoint an advisory planning commission, as was required of the two provisional regional agencies. The commission is to consist of an equal number of members from each State. Membership is to include but not be limited to the chief planning officers of each county and of the City of South Lake Tahoe; the chief sanitation or health officer, or their designees, of each county; the chief of the Nevada Bureau of Environmental Health, or his designee; the executive of the Lahonton Regional Water Quality Control Board, or his designee; the executive officer of the Tahoe [Interstate] Regional Planning Agency, who is to act as chairman; and at least four lay members who are residents of the region.

The advisory planning commission is to prepare plans and amendments to them, hold public hearings, review testimony given, and recommend to the governing body of the agency the plans or amendments for adoption. The governing body may adopt, modify, or reject the recommendations, or it may initiate and adopt a plan or amendment of its own.

33/ Cal. Gov't. Code Ann. tit. 7.4, §§ 66800, 66801 (West 1966 and Supp. 1970)--Cal. Stats. 1967, ch. 1589, p. 3804, § 1. Nev. Rev. Stat. §§ 277.200 to 277.220 (1969)--Nev. Laws 1968, ch. 5. Public Law 19-148, 91st Cong., Stat. at Large (83 Stat. 360).

A regional interim plan is to be recommended by the planning commission within 60 days and adopted by the governing body within 90 days after formation of the interstate agency. Similarly, a long-term regional plan is to be recommended by the planning commission within 15 months and adopted by the governing body 18 months after formation of the interstate agency.

The long-term regional plan is to include the same correlated elements that were prescribed for the California and Nevada provisional regional plans. Included were land use, transportation, conservation, recreation, and public service and facilities plans. Also, the interstate agency is granted the same broad regulatory powers as were conferred on the two provisional State regional agencies. These powers include subdivision and zoning regulations; and measures relating to water purity, waste disposal, tree removal, and grading and filling. These elements, regulations, and measures were discussed earlier in the examination of the legal aspects of the Nevada Tahoe Regional Planning Agency.

A business or recreational establishment is recognized by the interstate agency as a conforming use if on February 5, 1968, it met one of two qualifications. The establishment was licensed by one of the States; or, a proposed improvement is to be constructed on land zoned at that time for construction of the establishment.

All ordinances, rules, regulations, and policies adopted by the interstate agency are enforceable by the agency and by the respective States, counties, and cities. The agency is to police the region to assure compliance. If local governments do not enforce compliance, the agency may bring an action. Civil and criminal enforcement actions may be brought in the appropriate court in the State where the violation occurred, unless brought in a Federal court. For enforcement purposes, the agency is deemed a political subdivision of both States. Violation of any of its ordinances is a misdemeanor.

All public works projects, except those of the two States, are to be reviewed for compliance with the adopted regional plan and must be approved by the interstate agency prior to construction. Any plans, programs, and proposals of the two States and their executive and administrative agencies which may substantially affect the region must also be referred to the interstate agency for review and recommendation. But any projects may be constructed as proposed without approval of the interstate agency.

Before the end of each calendar year, the interstate agency is to estimate the amount of money needed, not exceeding $150,000, to support its activities during the succeeding fiscal year. The agency then is to apportion this amount among the five counties in the same ratio to the total sum required that the full cash valuation of taxable property within the region in each county bears to the total cash valuation of taxable property within the region. Each county is to pay the sum allotted to it by the agency.

The Tahoe Regional Planning Compact was approved by the Congress on December 18, 1969, subject to the following conditions:

1. The interstate agency may request cooperation from the Secretaries of Interior and Agriculture;

2. The President may appoint a nonvoting representative to the agency board;

3. Any additional powers conferred on the agency are not to be exercised unless approved by the Congress;

4. The compact is not to affect powers, rights, or obligations of the United States, nor is it to affect the applicability of any U.S. laws or regulations to the region, its waters, or the rights of Indians in the region; and

5. The right to require disclosure of information is reserved by the Congress as is the right to alter, amend, or repeal the act. 34/

PROBLEMS OF CHANGE IN RURAL AMERICA

Good roads and automobiles have made it possible and convenient for people to live in the country and work in the city. At the same time, people have moved from farms to work and live in and near urban centers. Finally, industrial decentralization has brought new jobs to many villages and rural areas.

Thus, in the near and more distant future, more people will move to the countryside. Certain questions arise as a result of such migration. What kind of communities will these people find? Will the areas be efficient and pleasant enough to attract friends of the new arrivals? Or will the communities grow haphazardly without planning-zoning guidance and become harmful mixtures of conflicting land uses--stores, factories, homes, and farms?

Zoning can help to guide community growth in accordance with a rational land use plan. In this way, urban sprawl with its waste of land, water, and tax resources can be avoided. Additionally, zoning can be used to protect areas that are highly desirable for homes; to reserve space for business and industrial growth; to protect agriculture and related processing and service trades; and to foster and protect forestry, recreation, and water resources.

With appropriate zoning regulations, a community can attain each of these objectives and many more. Factories, stores, and junkyards can be kept out of areas set aside for homes. Subdivisions and homes can be prevented from preempting potential industrial sites that have locational and other qualities favorable for industry. And a community can prevent premature invasion of better farming areas by homes and other nonfarm land uses. Zoning to protect agriculture can avoid many urban-agricultural conflicts that not only are vexing but also expensive for both farm and nonfarm people.

The kinds of zoning regulations, if any, that a local unit of government may exercise depend on the scope of zoning powers granted to the unit by the State legislature. As custodian of the State's zoning powers, the legislature may give or withhold them. Grants of these powers to counties, towns or townships,

34/ Public Law 91-148, 91st Cong., Stat. at Large (83 Stat. 360).

and other local governments are usually made by the legislature in zoning enabling statutes. These statutes do not zone communities. Instead, they indicate the scope of zoning--areas that may be zoned, zoning tools that may be used, and uses of these tools.

ZONING DEFINED AND DISTINGUISHED

Zoning is one of several measures used to attain community objectives. Some of these measures are closely related to zoning and are sometimes confused with it. Possible confusion may be avoided by defining and distinguishing zoning and related measures.

A community's plan often consists of two parts--physical and land use. The physical plan is concerned with the character and location of future roads, streets, parkways, bridges, playgrounds, parks, schools, aviation fields, public utilities, and other public and semipublic properties. The land use plan is concerned with the general location of areas for residence, business, industry, farming, forestry, recreation, watersheds, open spaces, and other purposes. The overall plan often embraces a variety of subplans, such as economic, social, civic improvement, transportation, and natural resource use plans.

Zoning, on the other hand, is one of several regulatory techniques available to the community for assuring that the land use plan is carried out. In a general way, planning embraces zoning and zoning may not entirely exclude planning. But they do not cover identical fields of activity.

Zoning ordinances and regulations are local laws adopted by local residents, either directly at zoning elections or indirectly through the local governing body. Zoning ordinances apply zoning regulations to land and buildings in the community.

The kinds of zoning regulations authorized by most rural zoning enabling statutes fall into four main classes. First in importance are use regulations. With them, a community can be divided into several kinds of zoning districts, such as those for farming, homes, business, industry, forestry and recreation, and so on.

With the second class, building-tract (area) regulations, restrictions may be established for minimum-sized lots or tracts, minimum setbacks, side and rear yards, and permissible lot coverage.

Regulations for building size, the third class, may be exercised to regulate and restrict the height, number of stories, and size of buildings and other structures.

The fourth class, population-density regulations, is often a prime byproduct of the other types of regulations.

Rural zoning, as used here, is broadly conceived. It is defined as zoning outside the boundaries of incorporated municipalities, plus zoning of rural areas within towns or townships of jurisdictionwide incorporation. Also included

are forestry and recreational zoning, first authorized and applied in the cut-over counties of the Western Lake States in the 1930's. Another type of rural zoning is that for the protection of agriculture, as developed in California and other States in recent decades. A fifth type comprises the growing variety of zoning measures that are authorized and applied in the open country in many States for resource conservation ends. Finally, rural zoning includes the urban type used for guiding residential, business, and industrial growth on a rapidly widening urban fringe.

The use of zoning power should be clearly distinguished from the right of eminent domain. In the exercise of this right, private property is taken for public use and an owner is entitled to compensation. Zoning power, on the other hand, is usually not retroactive and is exerted merely to regulate the use and enjoyment of property by the owner, who is not entitled to compensation for any injury he may sustain as a result.

The distinction between the power to zone and the power to suppress nuisances should be also kept in mind. Two differences are most important. First, zoning is a legal technique for guiding future orderly growth of the community by regulating and restricting use of land, buildings, and structures for trade, industry, residence, or other purposes. Second, the power to suppress nuisances is concerned with the abatement or prohibition of what is offensive, disorderly, or unsanitary. If the objectionable use is an existing nonconforming use and not a nuisance, usually the use in question is not affected by the zoning ordinance. But new nonconforming uses may be prohibited. An existing nuisance, however, may be ordered removed, and the financial loss must be borne by the owner.

Building codes constitute another related field of regulation. Their purpose is to provide certain minimum standards for safe and stable design, method of construction, and uses of materials in buildings and structures; and to regulate the equipment, maintenance, use, and occupancy of buildings and structures. Other regulatory techniques, such as platting and subdivision control and plumbing and electrical code regulations, are more definitive and less frequently confused.

Some characteristics of land use regulations in soil conservation districts resemble rural zoning ordinances, but the differences are also striking. The land use regulatory powers of soil conservation districts, for example, may be used either to prohibit certain harmful practices or to require beneficial practices. Suggested in various district enabling laws are regulations requiring special methods of cultivation, contour plowing, stripcropping, crop rotation, terracing, and the shifting of steep or erodible land from cultivation to trees and grass. Land use regulations, in other words, may be either positive or negative. That is, they may prohibit using land in a specified harmful way, or they may order certain practices. Zoning regulations, on the other hand, do not affirmatively request specific acts. Instead, they restrict or control individuals in the use of land and types of improvements. For wind erosion districts, regulations authorized by enabling laws are more akin to land use regulations of soil conservation districts than to zoning.

SCOPE, PURPOSE, AND METHOD OF ANALYSIS

Summarized in this publication are the main rural zoning powers now conferred on counties, towns and townships, and miscellaneous local governments by rural zoning enabling statutes of the 50 States. Statutes granting zoning powers to incorporated cities, towns, and villages are generally not included. However, statutes are included if they authorize urban governments to zone the urban fringe for specified distances outside municipal boundaries. Also discussed are the nearly 2 dozen laws under which zoning regulations are applied directly by the State. Airport zoning, which in most States is authorized under special-type enabling laws, is not examined. 35/

Zoning enabling statutes that grant power to zone outside incorporated municipalities are covered fully, as are statutes that authorize zoning of rural areas in towns or townships of jurisdictionwide incorporation--the practice in a few States.

The legal citations of the more than 350 statutes now in effect that authorize zoning of rural or unincorporated areas are listed in the appendix. The statutes are numbered serially by States. A number followed by "c" indicates a county enabling law; "t," a town or township enabling law; and "m," an enabling law of a miscellaneous unit of government. The same designations are used in the text and tables.

Data on rural zoning enabling laws generally are for the period ending January 1, 1969. In addition to presenting the State Code reference, if any, each legal citation identifies the first and the most recent applicable session law that was examined. Many of the citations, usually those that identify special zoning enabling statutes, include only State session law references.

This report revises and updates "Rural Zoning in the United States," Agr. Inf. Bul. 59 (1952), which also discussed rural zoning enabling legislation.

Emphasis throughout is on grants of zoning powers that are adapted to open-country areas. The analysis of zoning enabling laws is comparative; planning is treated only incidentally. Primarily the substantive phases of the zoning statutes are analyzed; the principal concern is with the types of zoning regulations that can be enacted. Measures emphasized are those that protect land and water resources and values--agricultural, forestry, recreational, wildlife, and scenic, among others. However, transition in the countryside calls for some consideration of zoning power for protecting residential, business, and industrial values as well. Procedures authorized in enacting, amending, or enforcing zoning regulations, although discussed, are given secondary attention.

At this point a warning is appropriate. Because a certain zoning power described in this report is authorized and may be validly exercised under the enabling law in one jurisdiction, it does not necessarily follow that the same kind of power may be legally exercised under another enabling law or in another jurisdiction. Questions of enabling authority, State and Federal constitutional limitations, and court interpretations must all be considered.

35/ Airport zoning regulates and restricts the height of structures and objects of natural growth, and the use of property near airports.

Increasing numbers of rural people and their elected officials are recognizing the value of zoning as one of several regulatory measures available for protecting the rural community and for guiding its growth. But they want more information on the kinds of zoning regulations that can be applied to solve their land use problems. They want to know more about the conventional zoning powers that may be exercised. Conventional zoning powers and regulations were created initially to serve urban ends--to prevent overcrowding and to keep conflicting land uses apart. Today, conventional zoning also serves many rural communities, especially on the expanding urban fringe.

Rural people also seek more knowledge about zoning adaptations and innovations which are reshaping urban-oriented zoning measures to further community objectives in the open country. Such reshaping occurred in Wisconsin in the 1930's, when cutover wastelands were enclosed in forestry and recreational zoning districts. Reshaping also took place in California about a decade ago, when exclusively agricultural zoning districts were created. Further, in recent years, several States have authorized additional innovations and adaptations in the use of zoning techniques.

CHAPTER II.--LEGISLATURES ARE CUSTODIANS OF ZONING POWERS

LEVELS OF GOVERNMENT EMPOWERED TO ZONE

Zoning powers reside in the State. The State may exercise these powers directly, it may confer them on local units of government, or it may do both. Only those governmental units or agencies granted zoning powers may zone.

All 50 States have authorized zoning of unincorporated or rural areas in more than three-fourths of the 3,000 counties in the United States (app. table 1). The number and kinds of government units empowered to zone in rural areas vary by State. Included are counties, towns or townships, certain cities and incorporated towns, metropolitan planning commissions, local authorities, boroughs, fire districts, civic associations, sanitary districts, and a few State commissions and agencies.

In 41 States, all or selected counties may zone; in 15 States, some or all towns or townships have zoning powers. All counties and towns or townships in six States--Michigan, Minnesota, North Dakota, Ohio, Pennsylvania, and Wisconsin--may pass zoning ordinances (app. table 2).

All or selected cities and towns in more than a dozen States--Alabama, Alaska, Arkansas, Florida, Illinois, Indiana, Maryland, Nebraska, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, and Wisconsin--have been granted extraterritorial zoning powers. 36/ With such powers, these cities and towns can zone adjacent areas outside their boundaries, usually for distances ranging from 1 to 3 miles.

36/ See Ala. 3m; Ill. 4m; Alaska 2m; Ark. 2m; Fla. 55m; Ind. 5m; Md. 10m; Neb. 4m-7m; N.C. 12m-46m; N. Dak. 3m; Okla. 5m; S. Dak. 2m; Tenn. 3m; and Wis. 5m.

In Connecticut, Florida, Maryland, New Hampshire, the Carolinas, Texas, and Vermont, zoning powers have been conferred on a variety of public agencies, including fire, water, sanitary, and public service districts, precincts, authorities, and associations. 37/ In North Dakota, by agreement between local governments in a regional planning area, zoning powers may be conferred on metropolitan or joint planning commissions (N. Dak. 4m).

Zoning at State levels has begun in 14 States. In five of them--Florida, Kansas, Maryland, North Carolina, and Oklahoma--urbanized areas are concerned. 38/ In the other nine--Alaska, Hawaii, Iowa, Louisiana, Mississippi, Rhode Island, South Dakota, West Virginia, and Wisconsin--rural or largely rural areas are involved. 39/

Counties, Towns, and Townships

Thirty-eight States authorized zoning of unincorporated or rural areas in 1950. Today, the total is 50, including Hawaii and Alaska. In addition, numerous new zoning enabling laws and amendments to existing laws were passed in the last decade in the initial 38 States.

An astonishing number of zoning enabling laws authorize zoning outside city and town limits. Of the more than 350 different laws in effect, about 180 give zoning authority to counties and over 70 to towns or townships. Generally, counties may zone in the South and West; towns or townships in the Northeast; and both counties and towns or townships in the Lake States.

In many States, only one rural zoning enabling law is in effect; and this law applies to counties or to towns or townships, depending on the State. Other States--Michigan, North Dakota, and Ohio, for example, have one law for counties and another for towns or townships. Several States, including Indiana, have separate enabling laws for different classes of counties or of towns or townships (appendix II).

A few States authorize zoning under special enabling laws that apply only to designated counties, towns or townships, cities and towns, or other units of government. Confusing numbers of special laws have been enacted in Connecticut, Florida, Georgia, and North Carolina.

In 1957, the Georgia legislature passed a general zoning enabling law for all counties. Each county is permitted to continue to operate under local or special acts until its board passes a resolution declaring the general law to be effective (Ga. 1c).

Connecticut also has passed a general zoning enabling law (Conn. 1t). But zoning powers continue to be handed out separately in special acts. One by one, the towns are authorized through these acts to zone under the general law but the powers granted may be enlarged or limited by the special acts.

37/ Conn. 2m, 43m-50m; Fla. 16m, 41m, 51m; Md. 9m; N.H. 3m-6m; N.C. 10m; S.C. 7m, 8m; Vt. 2m.

38/ Fla. 23m-27m, 34m, 56m; Kans. 4m; Md. 11m; N.C. 11m; Okla. 4m, 5m.

39/ Alaska 3m; Hawaii 4m, 5m; Iowa 2m; La. 5m; Miss. 2m; R.I. 11m; S. Dak. 3m; W. Va. 3m; Wis. 6m, 7m.

Extraterritorial Zoning

Fifteen States now authorize extraterritorial zoning by cities and towns. Two decades ago, such zoning had only been authorized by Nebraska and North Carolina. The increase in extraterritorial zoning legislation that occurred during the 1960's probably stemmed from several causes. There has been an urgent need for community guidance to promote orderly development on the urban fringe during recent years of explosive outgrowth. The zoning guidance needed may not have been provided by rural units of government because they lacked zoning powers, failed to exercise the powers granted, or administered zoning powers badly. Whatever the reason, legislatures authorized many cities and towns during the last decade to zone areas adjoining but outside their boundaries.

Enabling laws that authorize all or selected cities in 15 States to zone urban fringe areas fall into three classes. In the first class, extraterritorial zoning jurisdiction is granted to the municipality solely; in the second, such powers are conferred but rural representation on relevant commissions is required; and in the third, a variety of cooperative county-city zoning arrangements are permitted.

As examples of the first class, Nebraska laws exclusively empowered Omaha and Lincoln to zone all territory not over 3 miles beyond their city limits, as long ago as 1925 and 1929, respectively (Nebr. 4m, 6m). A new law, passed in 1957, conferred similar powers on smaller Nebraska cities. Under this law, any city containing more than 5,000 but less than 40,000 people may zone the area lying 2 miles beyond its corporate boundaries (Nebr. 5m). Another Nebraska law enacted the same year authorized all second-class cities and villages to zone within one-half mile of their boundaries (Nebr. 7m).

A 1961 Illinois law authorized cities and villages to zone areas not more than 1.5 miles beyond their corporate limits (Ill. 3m).

The Attorney General of Alabama has ruled that any municipality through its planning commission may zone for 5 miles outside its boundary. 40/ Since 1944, under this authority, the City of Montgomery has exercised zoning power over territory extending 3 miles beyond the city limits (Ala. 3m). Certain municipalities in Tennessee may zone adjacent areas within the municipalities' planning region as long as the county fails to zone (Tenn. 3m).

In Talbot County, Md., any incorporated town may plan and zone areas for 1 mile outside its boundaries. After a town adopts a master plan and zoning ordinance, county zoning jurisdiction in the 1 mile area ends (Md. 10m). Municipalities in North Dakota are empowered to zone all lands over which they have subdivision control until a regional planning or zoning commission is organized (N. Dak. 3m).

Home-rule cities that enjoy self-government may zone extraterritorially in Alaska. This power is said to be implied from a constitutional provision that permits home-rule cities to exercise all legislative powers not prohibited by law (Alaska 2m). In Tennessee, when the municipal planning commission has been

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40/ Quarterly Report of Attorney General of Alabama, July-Sept. (1944), pp. 34-37.

designated as a regional planning commission by the State, the city may zone all adjacent unincorporated territory within the municipal regional planning areas. Municipalities in Gibson County, Tenn., are excluded from this grant of extraterritorial power; and eligible municipalities may exercise such power only in the absence of county zoning in the areas affected (Tenn. 3m).

The second class of enabling laws mentioned earlier confers extraterritorial zoning powers on cities or towns but requires county (rural) representation on planning or zoning commissions. In New Mexico, for example, a municipality may zone extraterritorially areas over which it has platting jurisdiction. A special extraterritorial zoning commission is required, consisting of three municipal appointees and three county appointees living in the zoning area (N. Mex. 1c). Under an Indiana law, township representation on the city planning commission may range from one to five members with all rights and privileges of city members, including the right to vote on all questions. The commission prepares a master plan, of which zoning controls are a part, for the city and township. City jurisdiction ends when the township withdraws from joinder (Ind. 5m).

An extraterritorial zoning enabling law was enacted in Wisconsin in 1963. Under its provisions, cities of classes 1 through 3 may zone unincorporated areas extending 3 miles beyond corporate limits, and fourth-class cities and villages may zone such areas for 1-1/2 miles beyond corporate limits. Comprehensive zoning plans for the fringe areas are prepared and recommended by a majority of a commission consisting of three city members and three county members from the unincorporated area affected. Pending completion and adoption of the zoning plan, the city may enact a 2-year interim zoning ordinance for the area without the recommendation of the joint planning commission. Adoption of a permanent zoning plan, however, requires prior approval by a majority of the six-member commission (Wis. 5m).

An Oklahoma law permits establishment for Tulsa and Oklahoma City of metropolitan planning commissions, each consisting of seven city and five county members. The commission is empowered to prepare master plans for the city, the county, and the 5-mile fringe area. Plans become official upon adoption by the respective governments. However, plans for the 5-mile fringe area require prior approval by both governments. Additionally, the city alone adopts and administers zoning regulations for the fringe area, except for lands devoted to industrial uses (Okla. 5m).

Extraterritorial zoning powers had been conferred on four cities or towns in North Carolina by 1949. Today, possibly twoscore North Carolina municipalities have such powers. Each planning commission usually must include three members from the fringe area. Most of these cities and towns are empowered to zone areas extending 1 mile beyond corporate limits (appendix II). In a few acts, the areas are described by metes and bounds (N. C. 14m-16m, 31m). A general act passed in 1959 granted North Carolina municipalities containing more than 1,250 people the power to zone extraterritorially for 1 mile. The population provision of this act does not apply in Montgomery County, N.C., nor to cities in several other counties. Nor does the act as a whole apply to cities in 15 named counties. One-half of the membership of all planning and zoning boards and commissions concerned with extraterritorial areas must be appointed from the fringe areas affected (N.C. 12m).

Under the third class of enabling laws previously mentioned, cities and towns influence zoning outside their corporate boundaries through a variety of cooperative county-city zoning arrangements. A North Dakota law, for example, provides that the township zoning commission is to consist of three township supervisors and two appointees of the adjacent municipality. The commission prepares a zoning plan for the township (N. Dak. 2c). Another North Dakota act requires city representation on county planning commissions (N. Dak. 1c).

An Indiana act empowers cities and towns, upon petition by contiguous townships or noncontiguous townships if the city is the county seat, to plan and zone the petitioning townships (Ind. 5m). In other States, cities and towns may delegate the authority to the county to plan and zone land lying within their corporate boundaries. Enabling legislation in many other States authorizes metropolitan and joint city-county planning commissions.

Zoning by Special Districts

The need for planning and zoning guidance on the urban fringe may have produced another zoning innovation in nine States--the granting of zoning powers to various kinds of local districts and agencies.

A general law in Connecticut empowers several types of local improvement and service districts to adopt subdivision, building, planning, and zoning regulations. However, a district's regulations are superseded if the town containing the district adopts comparable regulations for the area (Conn. 2m). Six special Connecticut laws authorize a half-dozen local fire districts to zone their respective municipal areas (Conn. 43m-47m, 49m). Connecticut also has granted zoning powers to local associations (Conn. 48m, 50m).

In New Hampshire, zoning powers have been conferred on certain fire districts and village precincts, and on a water district (N.H. 3m-6m). Additionally both existing and new junkyards must be screened and licensed annually. New junkyards may not be established without a certificate of location; and these yards may not be less than 660 feet from classes 1, 2, and 3 highways nor less than 300 feet from classes 4, 5, and 6 highways (N.H. 2t)

Boards of certain sanitary districts in North Carolina, upon petition of two-thirds of the electors and landowners in the proposed zoning areas, may adopt zoning maps and regulations (N.C. 10m). In South Carolina, two public service districts may adopt and enforce zoning regulations (S.C. 7m, 8m). A Texas act empowers a flood control district to establish building setback lines along any waterway within the district (Tex. 2m). Finally, Florida laws empower certain local authorities (Fla. 16m, 41m) and zoning districts (Fla. 51m, 58m-60m) to adopt and administer zoning regulations.

Zoning by the State

Zoning powers in a final group of laws in 14 States are either conferred on selected State agencies or are exercised directly by the State legislature. Zoning by the State, a zoning innovation which may foreshadow a trend, could

lead to more effective techniques for coping with zoning problems in certain areas. States have taken direct zoning action in areas where (1) important State interests are directly affected by local land uses; (2) major benefits from zoning are nonlocal; (3) State agencies materially benefit from the zoning regulations; or (4) zoning at local levels has been ineffective.

Direct zoning by the State has been effected in several ways: (1) zoning ordinances, both interim and final, have been adopted by State legislatures for designated areas; (2) State laws that restrict land uses in certain areas have been passed; or (3) legislatures have enacted enabling laws that grant either broad or limited zoning powers to selected State agencies.

Zoning powers granted State agencies, as indicated below, may be either comprehensive or functionally limited; and they may be either statewide or geographically limited.

Zoning ordinances for designated areas have been passed by the Florida and North Carolina legislatures. A Florida act of 1949 included interim zoning regulations for the Whitfield Zoning District adjacent to Bradenton and Sarasota in Manatee County. In an existing business area, the erection of new structures for business and commerce is allowed. Elsewhere, only present uses and private residences are permitted, pending adoption of an ordinance in final form by a zoning commission comprised of property owners appointed by the Governor (Fla. 34m).

In 1957, the North Carolina legislature enacted a detailed interim ordinance for the town of Robersonville in Martin County. The ordinance established boundaries and regulations for three zoning districts--residential, business, and industrial. The local governing body, by ordinances duly adopted, may alter, modify, amend, or rescind any or all portions of the interim ordinance (N.C. 11m).

In 1947 and again in 1949, the Florida legislature adopted permanent zoning ordinances which were validated by later acts. The two ordinances provided detailed zoning regulations for Sunset Park Subdivision and Virginia Park Subdivision both located near Tampa in Hillsborough County (Fla. 24m, 25m). Other areas and subdivisions in the same county have also been zoned by the legislature (Fla. 23m, 26m, 27m).

State laws that restrict the uses of property in certain areas have been passed in Maryland and West Virginia. The Maryland law prohibits the operation of factories for producing or assembling explosives within a radius of 1 mile of any town or village in Kent County (Md. 11m). The West Virginia law limits the operation of electrical equipment within 10 miles of any radio astronomy facility and applies performance standards (W. Va. 3m).

Other laws grant zoning powers to various State agencies. An Oklahoma law, recently superseded, established a medical center improvement and zoning commission and endowed it with broad planning and zoning powers. The commission received exclusive authority to plan and zone for the orderly development of a medical center district, which included and surrounded the university medical school and hospitals. The district could be divided into various classes of

residential, business, and industrial subdistricts. Appropriate zoning regulations could be prescribed for each subdistrict. Oklahoma City zoning regulations remained in effect until new regulations were adopted by the commission (Okla. 3m).

A companion Oklahoma law, which also was superseded, created a capitol improvement and zoning commission with similar broad powers to plan and zone a district surrounding the capitol grounds (Okla. 4m). The superseding law is discussed in section "State Zoning of Other Problem Areas" in chapter I. A Kansas act empowers a State office building commission to veto changes of zoning regulations within a State zoning area in Topeka (Kans. 4m).

The Highway Commission of Mississippi is vested with the power to establish and enforce setback regulations (Miss. 2m). The Louisiana legislature, after approval of a facilitating constitutional amendment in 1966, empowered its department of highways to regulate outdoor advertising and junkyards along interstate and primary highways (La. 5m). The South Dakota legislature also passed measures dealing with outdoor advertising along interstate and primary highways. A 1967 act zoned as commercial substantial areas where billboards are permitted that lie within 660 feet of such highways (S. Dak. 3m). The Wisconsin legislature, on the other hand, excludes billboards from such 660-foot borders, except for areas zoned commercial or industrial within incorporated limits. The legislation also requires removal of all nonconforming signs within 1 year (Wis. 7m). In all three States, the regulations are administered by State agencies.

New benchmarks in State zoning were established by Hawaii in 1961. The legislature created a State land use commission and empowered and directed it to place all lands in the islands in one or another of four kinds of land use zoning districts--agricultural, conservation, rural, or urban. Prime agricultural lands are to be placed in agricultural districts; forest and watershed lands in conservation districts. Land used for small farms mixed with nonfarm homes on tracts containing one-half acre or more is to be placed in rural districts; lands now in urban uses, plus suitable reserve areas for growth, in urban districts (Hawaii 5m).

Hawaiian counties may exercise zoning powers in urban, rural, and agricultural districts but their regulations may not conflict with the land use regulations applied by the State. Within conservation districts, on the other hand, zoning powers are reserved to the department of land and natural resources. Petitions for changes of boundaries and regulations are submitted to the State land use commission through county planning commissions. The appropriate county officer or agency charged with administration of county zoning laws in each county is also to enforce the State zoning regulations but must report all violations to the land use commission (Hawaii 3c, 5m).

The Hawaiian land use zoning statute requires property to be assessed with consideration given to permitted uses as well as present uses. A related provision allows landowners in agricultural, rural, and conservation districts to "dedicate" their land for ranching or other agricultural uses for renewable 10-year terms and to have such land assessed at its value in such uses (Hawaii 5m).

Legislation in Alaska, Iowa, Rhode Island, and Wisconsin also authorizes zoning by selected State agencies. An Alaska act empowers the State department of natural resources to apply zoning regulations, at the request of the Secretary of the Interior, to Federal lands within unorganized boroughs, so as to facilitate sale of these lands. Any zoning done is final, unless disapproved by concurrent resolution at the next regular session of the legislature (Alaska 3m). In Rhode Island, the department of agriculture and conservation is empowered to restrict the use of coastal wetlands and strips of contiguous uplands which are not to be disturbed. The department may issue orders restricting such lands to uses compatible with public policy and deemed reasonably necessary to protect these marshes (R.I. 11m). In Iowa, the natural resource council is authorized to establish, alter, enforce, and revoke regulations for the orderly development and wise use of the flood plain of any river or stream in the State. The council also is empowered to review, approve, or reject flood plain zoning regulations and amendments that are adopted by local governments (Iowa 2m).

The Wisconsin legislature empowered its department of resource development to zone flood plains and shorelands on navigable waters. The department may zone if the local government fails to zone by January 1, 1968, or if local zoning is inadequate (Wis. 6m).

Shorelands of navigable waters in unincorporated areas in Wisconsin are defined as those areas within the following distances from normal high-water elevations: 1,000 feet from a lake, pond, or flowage; 300 feet from a river or stream, or to the landward side of the flood plain--whichever of these distances is greater. If any county does not adopt an ordinance by the time specified, or if the department, after notice and hearing, determines that a county has adopted an ordinance which fails to meet reasonable minimum standards in accomplishing shoreland protection objectives, the department is to adopt such an ordinance.

If any county, city, or village in Wisconsin does not adopt a reasonable and effective flood plain zoning ordinance by January 1, 1968, the department, after public hearing, is to fix by order the limits of those flood plains in the local government's jurisdiction within which serious flood damage may occur. The department may proceed upon petition of an interested State agency, a municipality, 12 or more freeholders, or upon its own motion. As soon as practicable after public hearing, the department is to adopt a flood plain zoning ordinance, which will be administered and enforced by the county, city, or village. All costs are assessed against the local government. The ordinance may be modified only with the written consent of the department, except that more restrictive flood plain regulations may be adopted (Wis. 6m).

AREAS THAT MAY BE ZONED

Over 60 percent of all rural zoning enabling statutes authorize zoning in the entire unincorporated area of the government unit, be it county, town, or township. A few of these statutes also empower rural units of government to zone incorporated areas, usually at the municipality's request. The remainder involve the zoning of areas with unique problems--the urban fringe, local option areas, special districts, and the roadside, among others. These statutes give power to a variety of urban and rural government units, including cities, towns or townships, counties, local service districts, and State agencies. Such

statutes include special acts that apply only to certain areas or types of problem areas and general acts that apply to specified problem areas in addition to larger urban or rural areas.

Urban Fringe

Express provisions relating to zoning of the urban fringe were observed in more than 60 zoning enabling statutes, including both general and special laws. About 50 of these statutes provide for extraterritorial zoning by cities and towns. 41/

Most county zoning enabling statutes grant countywide jurisdiction over unincorporated areas. Usually, the power to zone selected areas of the urban fringe is included. In a few of these general statutes, however, the authority to zone fringe areas is expressly reconfirmed (Colo. 1c; Kans. 2c). In other acts, county zoning powers are directed only at problem areas, including the urban fringe. 42/

Fringe areas that may be zoned under county zoning enabling statutes may consist of the near-in fringe only or the extended fringe also, depending on the statute. Zoning may be limited to adjacent townships (Kans. 2c); named townships (S.C. 4c); or areas outside boundaries of any city, town, or village which has adopted a zoning plan (Mo. 3c). Areas to be zoned may be described by metes and bounds (N.C. 4c) or may be located within a given radius of city limits. Two statutes specify a maximum radius of 3 miles (Kans. 3c; Okla. 2c).

In Pennsylvania, any county may but need not apply its zoning ordinance to any or all cities or boroughs that do not have or are not enforcing their own zoning ordinances (Pa. 1c). An Oklahoma act empowers cities to zone 5 miles beyond their boundaries and counties to zone the rest of the area in the county (Okla. 1c). Finally, a Tennessee statute authorizes zoning of the 5-mile urban fringe upon approval of both the city and county (Tenn. 4c).

Local-Option Areas

Several zoning enabling statutes empower counties to zone selected areas, usually upon request of the areas concerned. In Arizona, for example, voters in a county that has adopted a zoning plan may, within 90 days, petition for an election to decide whether zoning of the county, or any part of it, is to procee only by local option. If local option is approved, 25 percent of the realty owners, by acreage and number, within a proposed local-option zoning area containing not less than 160 acres, may petition the county board to remap zoning district boundaries within the area and to call an election. If the area's voters approve, the county board adopts the new map for the local-option area but retains the original zoning regulations (Ariz. 1c). A Florida act empowers the county board to zone only upon written permission from a majority of property owners, including owners of more than one-half of the land in the area

41/ See section "Extraterritorial Zoning" in chapter II for detailed discussion.

42/ Kans. 3c; Mont. 1c; N.C. 2c, 5c; Okla. 2c; S.C. 4c.

proposed for zoning (Fla. 62c). Special zoning districts may be established in New Mexico upon petition of at least 51 percent of registered electors residing in an area that contains at least 150 single-family dwellings and is outside municipal boundaries (N. Mex. 1c).

Zoning of local areas in Colorado can be initiated by the county planning commission. The commission may prepare and certify a single zoning plan for the county or separate and successive zoning plans for urbanized and rural parts of the county (Colo. 1c). A similar choice is provided by North Carolina statutes. Zoning may be countywide or apply to selected areas only. But no zoning area may contain less than 640 acres or 10 tracts in separate ownership (N.C. 1c; 3c). Townships in Indiana may be zoned by cities that are county seats and by contiguous cities or counties upon petition of 50 freeholders. In addition, the parent county must not have adopted zoning regulations (Ind. 5m).

A community planning act in Tennessee permits zoning of unincorporated areas not exceeding 10 square miles in extent and containing not less than 500 inhabitants. The zoning process may be started when at least 100 residents petition the State planning commission to create a community planning commission. The latter group prepares the zoning plan. The quarterly county court serves as the enacting body (Tenn. 2c).

Special Districts

Only designated local areas may be zoned under provisions of about 30 enabling statutes. Fire districts in Connecticut and New Hampshire, for example, may zone only their respective local areas (Conn. 43m-47m; N.H. 5m). In Florida, certain local authorities have zoning powers (Fla. 16m, 41m). The same pertains to sanitary and public service districts in the Carolinas (N.C. 10m; S.C. 7m, 8m); and to water districts, village precincts, and similar local agencies in other States (N.H. 3m, 4m; N.C. 10m, 34t; Tex. 2m). Small local areas occasionally are zoned by State agencies. Six Florida acts zone specified residential areas; a Maryland act protects an urban fringe; and Kansas and Oklahoma laws empower State agencies to zone designated areas around capitol buildings and medical centers. 43/ In Alaska, certain unorganized boroughs may be zoned by a State agency (Alaska 3m).

Roadsides

Several enabling laws contain specific permission to zone strips bordering highways. Widths of these strips vary considerably. Usually, broad zoning powers are granted but in a few cases mentioned later, only setback lines may be established.

Zoning jurisdiction applies to both sides of the road, but in most laws is restricted to unincorporated territory. Widths of the roadside strips are generally measured from the center line of the highway. 44/ Under some acts, however, measurement is from the edge of the right-of-way (Ga. 1c; Fla. 4c).

43/ See section "Zoning by State" in chapter II.
44/ Ga. 8c, 9c; Fla. 14c, 20c, 35c; N.C. 34t.

The maximum permissible width of each of these parallel strips ranges from 200 feet (Ga. 8c, 9c) to 1,000 yards (Fla. 35c). Other maximums sanctioned are 500 feet (Ga. 1c), 600 feet (N.C. 34t), 1,000 feet (Fla. 4c), 1/4 mile-1,320 feet (Okla. 2c), and 1,500 feet (Fla. 8c, 14c, 20c).

Only the borders of designated roads or classes of roads specified in the various acts may be zoned. Depending on the statute, the only roads involved may be those designated; county (Fla. 14c), State (Fla. 35c), or Federal roads (N.C. 34t); or one or more of these types of roads (Ga. 1c, 8c, 9c; Okla. 2c). Or primary roads (Fla. 4c), or public highways (Ill. 2c) may be included. A Florida act authorizes zoning of the borders of interstate, primary, or secondary State roads, as designated by the State road department; or county roads, as selected by the county (Fla. 20c).

Under provisions of a few acts, roadside zoning is limited to the establishment of setback lines. Illinois counties are "empowered to establish, regulate and limit the building or setback lines on or along any road, street, traffic-way, drive or parkway in the county outside . . . corporate limits . . ." (Ill. 2c). A Mississippi law vests the State highway commission with power "to establish and enforce setback regulations" along any road in the State highway system (Miss. 2m). Both acts are silent as to permissible depths of setbacks. Presumably, depths may vary with local needs, classes of highways, and types of roadside land uses. Advertising along interstate and primary highways is regulated under provisions of statutes recently adopted in Louisiana, South Dakota, and Wisconsin. 45/

A Florida act provides that setback lines are not to be more than 100 feet from the center line of the highway. Within this setback area, erection of buildings and structures may be prohibited, except for fences and improvements to facilitate ingress and egress (Fla. 48c).

Some counties and municipalities in Georgia are empowered to adopt official maps that show the location of existing and proposed roads and streets. Construction or location of improvements in the beds of such proposed roadways may be prohibited, subject to certain rights on appeal (Ga. 2c).

Park and Water Frontages

State legislatures have authorized the zoning of several other kinds of problem areas or "strips," including park and water frontages, watersheds, and flood plains. Zoning of these "strip" areas may be authorized by special acts or sanctioned by special language in general zoning enabling laws.

A Texas law empowers two counties to zone areas within 2 miles of parks or of the beach on Padre Island (Tex. 1c). Any county in Washington may regulate the setback of buildings along parks or public water frontages (Wash. 1c). In Arkansas, extraterritorial planning, subdivision, and zoning jurisdiction has been conferred on cities of the first and second class located along navigable streams. These cities may plan, regulate subdivision, and zone territory lying

45/ See section "Zoning by State" in chapter II.

along the stream for a distance of 5 miles of the corporate limits, in either direction, and for a distance of 2 miles laterally from the thread of the stream (Ark. 2m). A general law in Georgia, among other provisions, grants counties the conventional zoning powers over land or water areas 500 feet wide on either side of any waterline of a stream or reservoir (Ga. 1c). Areas within one-half of a mile of a municipally owned water supply or reservoir may be zoned under an Oklahoma statute (Okla. 2c).

Several special acts are directed at the protection of water-oriented recreational areas. Under provisions of one of these acts, Iredell County, N.C., may zone areas within 3 miles of the high-water mark of Cowans Ford Lake (N.C. 8c). Similarly, in Georgia, Lumpkin County may zone a 2-mile fringe around Lake Lanier (Ga. 22c). Amelia Island in Florida may be zoned by Nassau County (Fla. 39c). Most of the special zoning enabling laws in Florida confer zoning jurisdiction over water as well as land (see Fla. acts in appendix II). Similarly, recently adopted laws in Pennsylvania and Vermont authorize regulation of specific uses of land, watercourses, and other bodies of water (Pa. 1c and t; Vt. 1t).

Both general and special express provisions that authorize zoning of flood plains, flood channels, and watersheds are found in a few zoning enabling statutes. Towns in Rhode Island may prohibit or limit uses of land in areas deemed subject to seasonal or periodic flooding (R.I. 1t). Similarly, Illinois counties are empowered to regulate and restrict the intensity of land uses and establish setback lines on or along floodwater runoff channels or basins in unincorporated areas (Ill. 1c). A flood control district in Harris County, Tex., is empowered to establish and maintain setback lines along any waterway within the boundaries of the district (Tex. 2m). State agencies in Iowa and Wisconsin may zone the flood plain, if local governments zone inadequately or fail to zone (Iowa 2m; Wis. 6m).

Enabling statutes in Tennessee and West Virginia empower any county to zone flood plains as necessary to qualify for flood insurance under existing or future Federal laws. 46/ Under these zoning enabling statutes, special districts may be established within areas deemed subject to seasonal or periodic flooding. Regulations that will minimize danger to life and property may be applied (Tenn. 1c; W. Va. 2c).

A few other grants of power to regulate use of land abutting rivers, streams, and lakes deserve mention. In Michigan, county boards of supervisors may establish setback lines in areas subject to damage from beach erosion (Mich. 1c); and in Wisconsin, counties may regulate and restrict the use made of areas in and along channels and streams. In these areas, trades or industries, filling or dumping, or erection and location of structures may be prohibited or restricted (Wis. 1c). A singular provision in an Oklahoma law authorizes zoning by any county "having an upstream terminal port and turnaround where navigation ends, or in any county containing all or part of a reservoir or reservoirs constructed by the U.S. Army Corps of Engineers." The regulations may be imposed in any part or all of the unincorporated area within the county (Okla. 2c).

46/ See Federal Flood Insurance Act of 1968.

Other Problem Areas

Areas adjoining military facilities sometimes receive special attention in zoning enabling statutes. An Idaho act, for example, limits county zoning to unincorporated areas that are within a radius of 5 miles from military or naval reservations (Idaho 2c). Another act empowers Craven County, N.C., to zone certain areas that adjoin the Cherry Point Marine Corps Air Station (N.C. 4c).

Somewhat apart from the usual province of zoning are considerations of water supply and sanitation. Though these matters are usually handled in legislation that authorizes the creation of water supply and sewer districts, they are sometimes found in zoning laws. In Virginia, for example, any county may regulate the sizes of lots in unincorporated areas where no public sewer is available (Va. 1c). Similarly, Wyoming authorizes the creation of zones ranging 1 to 3 miles in width, measured from the boundaries of towns and cities. Within these zones, the county may regulate the type of sanitary facilities, including domestic water supply, sewage disposal, rodent and insect control, and the storage, collection, and disposal of garbage and refuse (Wyo. 2c).

A unique kind of zoning area--the historic district--may be established under provisions of recently enacted enabling laws in Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, Rhode Island, and Tennessee. 47/

CHAPTER III.--LEGAL RESTRAINTS ON ZONING OBJECTIVES

STATUTORY CURBS

Federal and State constitutions, courts, and zoning enabling statutes all set limits on the types of objectives that may be pursued with zoning ordinances and regulations. Zoning ordinances must find their justification in some aspect of the police power (that is, the community regulatory power) which is asserted for the public well-being. 48/ A zoning ordinance is an expression or exercise of the police power by local government. 49/ Zoning regulations may not be imposed if they do not substantially relate to the public health, safety, morals, or general welfare of the community. 50/ Nor may unnecessary and unreasonable restrictions on use of private property or pursuit of lawful activities be imposed under the guise of police power. 51/ Laws or regulations based on or constituting an exercise of this power must not be unreasonable, arbitrary, or capricious. Moreover, the laws or regulations that are applied must have a real and substantial relation to the objectives sought. 52/ Permissible objectives are discussed in "Authorized Statutory Objectives of Zoning Regulations," the next section.

47/ See section "Historic and Other Districts" in chapter VI.

48/ Euclid v. Amber Realty Co., 272 U.S. 365, 387 (1926).

49/ Valley View Village v. Proffett, 221 F. 2d 412, 416 (1955).

50/ Nectow v. Cambridge, 277 U.S. 183, 188 (1928).

51/ State of Washington ex rel. Seattle Title Trust Co. v. Roberge, 278 U.S. 116, 121 (1928).

52/ Nebbia v. New York, 291 U.S. 502, 525 (1934).

Zoning powers, as mentioned, may be exercised only to promote health, safety, morals, or the general welfare. These are the four main pillars that support zoning in both town and country. All four are included as purposes for zoning in the grant of power contained in the enabling acts of most States. The four are also found in 95 percent of the enabling laws that authorize zoning outside of corporate municipalities. In California, Iowa, Louisiana, and Nevada, these fundamental purposes are not expressly asserted in the enabling laws but are implied. In Arizona, Maine, and Vermont, the purpose "promoting morals" is omitted but probably is also implied.

A number of enabling laws detail other purposes as part of the police power. In several States, promoting "convenience," "order," or "prosperity" are added. 53/ Promoting "comfort" appears in the laws of some States. 54/ A few laws add "peace," "property values," "appearance," "conservation," and others.

Sometimes the purpose of the grant of zoning powers is restricted to only one or two of the four main pillars as, for example, health or safety. The grant of zoning powers under these laws is usually limited.

AUTHORIZED STATUTORY OBJECTIVES OF ZONING REGULATIONS

The previous section was concerned with limitations on the exercise of zoning powers. This section discusses the purposes for which zoning ordinances may be adopted and the manner in which the ordinances are to be prepared.

The State legislatures, the sources of zoning powers, may define and limit the scope of the powers granted. They may also provide instructions or directions to local governments as to the purposes, objectives, and considerations to be kept in mind when designing zoning ordinances. Most zoning enabling laws contain such instructions, which are dualistic in nature: they indicate the goals or objectives of zoning and they suggest how the ordinance should be prepared.

A large proportion of the enabling laws that authorize zoning outside of incorporated boundaries have been patterned after the Standard State Zoning Enabling Act (14). 55/ This act includes clear instructions or directives to guide the adoption of zoning regulations.

"Such regulations," the act declares, "shall be made in accordance with a comprehensive plan and designed . . ." to achieve the following purposes:

1. "to lessen congestion in the streets;

2. "to secure safety from fire, panic, and other dangers;

3. "to promote health and the general welfare;

53/ Colo., Del., Ga., Oreg., Pa., Tenn., and Utah.

54/ Ill., Ind., Kans., Mo., Okla., and W. Va.

55/ Underscored numbers in parentheses refer to items in Literature Cited at the end of this report.

4. "to provide adequate light and air;

5. "to prevent the overcrowding of land; to avoid undue concentration of population; and

6. "to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements."

"Such regulations," the act continues, "shall be made with the reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality."

The standard act was designed for urban areas. Since its publication in 1926, many changes have occurred. New land use problems have emerged in urbanized areas; suburban growth has been rapid and widespread; and new land use conflicts have arisen in the open country of farms and forests.

Change and the passing decades also have brought numerous enabling laws that permit zoning of unincorporated areas--the urban fringe, farm communities, and forested districts. Many of these laws are designed to enable rural communities to cope with both old and new pressing land use problems and to further some new objectives.

The rural zoning enabling laws contain a variety of instructions from the State legislatures as to the authorized purposes of zoning. Those found in the standard act of 1926 are usually included, although sometimes modified. These traditional purposes serve to structure the aims of zoning in urban-type areas. But many other instructions regarding zoning purposes have been added. Some of these enlarge the scope of zoning. They all reflect both the functional and geographical growth of zoning.

Instructions that pertain to the purposes of zoning are arranged in 10 groups. The authorized objectives included in each of the first six groups are akin to one or another of the objectives listed in the standard act. These six groups are discussed in the section "Traditional Objectives." The comparatively new instructions are arranged by subject matter in the four remaining groups, discussed in the section "More Recent Objectives."

Three additional groups of instructions that concern the manner of zoning are included in the section "Manner of Preparing Ordinances." Two of these are suggested by the standard act. The third is new.

Two-thirds of the zoning enabling laws for unincorporated areas contain all six of the more traditional instructions in the standard act that concern the purposes of zoning. State legislatures, when drafting their respective enabling laws, have often selected at will from the standard act and have added their own instructions.

Traditional Objectives

The standard act declares, as indicated by the first instruction below, that zoning regulations are "to lessen congestion in the streets." Traffic problems have multiplied since this instruction was phrased. New zoning aims reflect concern about current traffic and related problems in town and country--highway planning, encroachment on the roadside, preserving carrying capacities of the roads, and providing convenient access and safety. Such regulations are to be made in accordance with a comprehensive plan and designed:

1. To lessen congestion in the streets:

   to lessen congestion in the streets or roads (Del. 1c); 56/

   to facilitate traffic movement (N. Dak. 2t);

   to promote adequate provision for traffic (Ga. 20c);

   to promote safe flow of traffic (Md. 6c);

   to regulate distracting hazards to traffic (Conn. 35t);

   to protect highways from encroachment of advertising structures and buildings (Md. 6c);

   to provide an adequate street system (Maine 1t);

   to promote traffic safety (Maine 1t); and

   to eliminate hazards to safe motoring (Conn. 4t).

A second major aim of zoning is to secure safety from various dangers. Several instructions expressly name certain dangers--floods, windstorms, airports, and so on--all of these may come within the broader term "other dangers."

2. To secure safety from fire, panic, and other dangers;

   to secure safety from floods (Ind. 2c, 3c);

   to secure safety from flood and erosion (Fla. 39c);

   to lessen and avoid hazards from floodwaters (Ill. 1c);

   to eliminate development of hazardous areas around airports (Fla. 54c); and

   to secure safety from fire, panic, windstorms, and other dangers; and to secure safety from fire, collapse, or explosion (Conn. 43m).

56/ Other zoning enabling laws may include a similar instruction. Only one or, at most, two laws are identified as the source of most of the various purposes of zoning listed here and elsewhere in this report.

Promoting health and general welfare are other basic aims of zoning. The term "general welfare," in zoning parlance, may well become more embracing.

3. To promote health and the general welfare:

   to promote healthful, safe, aesthetic surroundings and conditions (Oreg. 1c);

   to prevent housing development in unsanitary areas (Maine 1t);

   to prevent spread of disease (Conn. 43m);

   to preserve property values (Ind. 3c);

   to promote desirable living conditions and the sustained stability of neighborhoods (Ga. 7c); and

   to promote a wholesome home environment (Maine 1t).

A fourth major objective of most zoning enabling laws is the provision of adequate light and air. Enabling laws authorize regulation of the size of yards, courts, and other open space, the percentage of lots that may be occupied, and various other controls. Another approach establishes geometric areas, which are drawn in relation to window openings, and allows no other part of any building to intrude therein.

4. To provide adequate light and air.

A fifth major objective of zoning is the maintenance of suitable population densities. An initial aim was to prevent overcrowding of land. Laws have been rephrased to apply to land and water or real estate. Other laws authorize use of zoning to promote economic distribution of population.

5. To prevent the overcrowding of land; and to avoid undue concentration of population:

   to encourage distribution of population, classification of land uses, and distribution of land development and utilization that will tend to facilitate economical and adequate provision for transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements (Ga. 18c; Tenn. 13c);

   to prevent overcrowding of real estate (Maine 1t);

   to prevent overcrowding of land and water (Fla. 54c);

   to prevent excessive concentration of population (Tenn. 13c);

   to prevent wasteful scattering of population (Del. 1c);

   to encourage the formation of community units (Maine 1t); and

to promote classification of land uses and distribution of land development and land uses (Utah 1c).

Recent haphazard suburban growth has increased the need for zoning measures to facilitate the providing of essential facilities and services.

6. To facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements:

to facilitate highway development and transportation (Conn. 5t);

to provide for adequate public services (Maine 1t);

to encourage distribution of population and land use that will facilitate provision for public requirements (Ga. 7c; Fla. 39c); and

to encourage city, town, and county cooperative planning and zoning to assure adequate facilities (Ind. 3c).

More Recent Objectives

Four groups of zoning objectives not spelled out in the standard act are discussed below concerning orderly growth, natural resources, historic and scenic attractions, and agriculture and industry. They reflect a two-way growth of zoning: (1) geographically--into rural areas; and (2) functionally--for dealing with new problems.

In recent decades, as mentioned, explosive and often haphazard growth has brought endless problems to both town and country. Legislatures in many States have suggested that zoning be used to achieve newly stated goals--to promote orderly growth, coordinated development, good civic design, desirable living conditions and community units, or variations of these.

7. To promote orderly growth:

to protect the development of both urban and nonurban areas (Del. 1c);

to secure orderly development of approaches to municipality (N. Dak. 2t);

to protect and guide the development of nonurban areas (Minn. 1c);

to direct building development in accordance with a well-considered plan (Oreg. 2c);

to promote good civic design and arrangement (Md. 5c);

to encourage appropriate trends in development (Mich. 1c);

to promote a coordinated development of unbuilt area (Wash. 1c; Maine 1t);

to promote desirable living conditions (Ga. 1c);

to encourage formation of community units (Maine 1t);

to promote sustained stability of neighborhoods (Ga. 1c);

to prevent housing development in unsanitary areas (Maine 1t); and

to preserve and increase the town's amenities (Mass. 1t).

Enabling laws in a dozen States expressly authorize zoning regulations for conserving and developing natural resources. The earliest of these laws were passed in the 1930's in the Northern Lake States. There, a major zoning aim was to bring order out of land use chaos in the cutover counties. Zoning helped to put lands that were submarginal for farming into more profitable forestry and recreational uses. Zoning can have a similar effect in other submarginal farming areas.

More recent laws in several other States also authorize use of zoning regulation to gain conservation objectives.

8. To conserve and develop natural resources (S. Dak. 1c):

to promote conservation of necessary forest growth and to promote conservation and development of water resources adequate for present and future needs (Hawaii 4m);

to conserve and restore natural beauty and other natural resources (Wash. 1c);

to promote conservation of exceptional natural physical features (R.I. 5t);

to conserve natural resources of the county with consideration given to prospective needs for development thereof (Oreg. 1c).

Vacationlands are in increasing demand. Rising income, automobiles, long weekends, and a population explosion are some of the causes. Enabling laws in a number of States authorize zoning regulations to foster and protect vacationlands. The older of these laws suggest zoning regulations designed to protect scenic attractions, including the roadside. Some recent laws propose zoning to preserve historic features. 57/

9. To preserve historic and scenic attractions:

to perpetuate and preserve historical features (Conn. 22t);

to promote historic districts;

to safeguard heritage;

to foster civic beauty (R.I. 3t);

57/ See section "Historic and Other Districts" in chapter VI.

to preserve scenic beauty (Md. 6c);

to promote conservation of exceptional physical features (R.I. 5t);

to conserve natural or landscaped and improved scenery (Conn. 4t);

to restrict unsightly development (Conn. 35t);

to provide places of recreation (Tex. 1c); and

to promote recreational use of county parks (Tex. 1c).

Zoning regulations that are designed to foster agriculture were expressly authorized by Pennsylvania in 1929. Today, a score of States have enabling laws with similar provisions. Most of these laws also direct that zoning be designed to foster business and industry.

These zoning enabling laws seem custom-made for communities that appreciate the interdependence of agriculture, business, and industry in an age of agribusiness. Not only are the laws helpful in bringing more off-farm jobs to rural areas, but they also may be of service in restoring and protecting forestry and recreation areas.

10. To foster agriculture and other industries:

to prevent soil erosion (Minn. 1c);

to conserve soil fertility (N.C. 7c);

to protect the food supply (Del. 1c);

to assure that needs of agriculture, industry, and business be recognized in growth (Ind. 3c);

to strengthen economy (R.I. 3t); and

to protect and guide the development of nonurban areas (N. Dak. 1c).

Manner of Preparing Ordinances

The standard zoning enabling act contains additional instructions from the legislative body that, in substance, provide direction for preparing the zoning ordinance. "Such regulations," the standard act provides, "shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view--"

1. To conserving the value of buildings:

to conserving property values, including the tax base (Ala. 1c);

to conserving property values (Oreg. 2c);

to protect property against blight and depreciation (S.C. 1c);

to protect the tax base (S. Dak. 1c); and

to promote the sustained stability of neighborhoods (Ga. 7c).

2. To encouraging the most appropriate use of land throughout a municipality:

to encourage the most appropriate uses of land and water (Fla. acts);

to encourage appropriate uses of land, buildings, and structures (Ga. 13c);

to secure the most economic use of land (Mo. 1c);

to secure an appropriate allotment of land area in new development for all the requirements of community life (Wash. 1c; Maine 1t);

to limit improper uses of land (Ark. 1c); and

to prevent undue encroachment on parks, forests, recreational facilities, and military and naval facilities (Okla. 1c).

Both of these considerations, included as guides in the standard act, have been rephrased in other zoning enabling acts so as to broaden their scope. For example, the regulations have been widened to include conservation of property values, including the tax base--not only the value of buildings. Similarly, the regulations have been broadened to encourage the most appropriate use of both land and water, instead of land only.

A third consideration not found in the standard act--securing economy in governmental expenditures--is included in the laws of a score of States. Variations include reducing the waste from excessive numbers of roads and the promotion of economy in development.

3. Securing economy in governmental expenditures:

to prevent waste (Minn. 1c);

to reduce waste from excessive numbers of roads (Minn. 4t; Del. 1c);

to create a complementary land assessment basis (Hawaii 5m); and

to prevent wasteful scattering of population (N.C. 7c).

CHAPTER IV.--FACTORS SHAPING THE OPERATION OF RURAL ZONING

The preceding chapter looked at some legal restraints on the use of zoning powers and set forth the kinds of objectives that may be pursued by zoning. This chapter, on the other hand, examines the setting in which zoning actually operates--the character and scope of rural change; the resulting land use problems, community needs, and objectives; the reasons for the shortcomings of zoning in dealing with resulting problems and objectives; and the various means used by States to influence local zoning regulations. With this overview, the reader will be better prepared to assess the adequacy of existing zoning powers that have been conferred.

ARE PRESENT ZONING TECHNIQUES ADEQUATE?

Several questions arise in an examination of rural zoning techniques:

1. Are the zoning powers now conferred on rural units of government adequate for the tasks required under conditions of accelerated change in rural America?

2. Are presently authorized zoning measures applied in the most effective manner?

3. Are powers conferred by present rural zoning enabling statutes adequate to allow local governments to adopt zoning regulations and techniques suggested by recent zoning innovations, including planned residential development, cluster zoning, and application of performance standards?

4. Are new zoning regulations and techniques needed to cope with problems stemming from rampant change?

5. Are zoning regulations applied by the most appropriate level or levels of government?

6. Are zoning districts and regulations of adjacent units of government wisely coordinated?

7. Are zoning measures used in effective coordination with other regulatory measures?

FORCES CAUSING RURAL LAND USE CHANGES

Rural people are moving away from submarginal farming areas and from productive farming areas that are adjusting to mechanization. Marginal farmlands are becoming forest land, grazing land, recreation land, or often idle land. Farming units in productive agricultural areas are becoming larger. Many of the smaller farms are being sold and added to larger more economic farm units. In both marginal and productive farming areas, farmers now work part-time in farming and hold off-farm jobs.

The U.S. rural farm population declined from 23,048,000 58/ in 1950 to 15,635,000 in 1960, and to 10,817,000 in 1967 (11, table 642, p. 444). The average decline was 720,000 people annually. In the first 10 years of the period, the rural nonfarm population rose from 31,431,000 to 40,597,000, an increase of 9,166,000 people (8, table 11, p. 16).

In 1950, there were 3,706,000 commercial farms in the United States. The total declined to 2,416,000 by 1959, to 2,166,000 by 1964 (6, table 18, p. 784), and to 1,639,000 by 1968 (3, table 44, p. 46).

The urban population, on the other hand, increased from 96,847,000 to 125,284,000 people during 1950-60, an increase of 28,437,000 people (9, table 14, p. 17). Data for 1970 are not available.

The many thousands, often young adults, who leave the farms annually are moving to places with jobs and with the promise of a better life for themselves and their children. Many settle in central cities, but a far greater number move to areas bordering these cities. Conversely, added millions are moving out of the crowded cities into the same fringe areas, where there is more room, a greener landscape, and fresher air.

In 1960, approximately 112,323,000 people lived in 212 Standard Metropolitan Statistical Areas (SMSA's) in the United States. 59/ In 1966, there were 125,232,000 people living in these areas (7). Growth is greatest in areas bordering central cities. For example, numbers living in central cities rose from 57,790,000 people in 1960 to 59,118,000 people in 1966, an average annual increase of 0.5 percent. In the same 6-year period, those living in bordering areas increased from 54,533,000 to 65,815,000 people, an average annual rise of 3.1 percent (10, table 17, p. 18).

Population growth in 1950-60 in SMSA's averaged 10.8 percent in central cities and an astonishing 48.5 percent in the areas outside these cities (10, table 17, p. 18).

Population projections for the United States for 1985 range from a low of about 242 million people to a high of nearly 275 million (10, table 5, p. 7). Total population, including armed forces abroad, was 200,827,000 people in May 1968 (10, table 2, p. 5).

If past trends in population growth and ratios of rural farm people to rural nonfarm and urban people continue during the next two decades, and growth of SMSA's continues, added millions of people can be expected to settle in the near-in and extended urban fringe bordering central cities.

58/ Data for 1950 exclude Alaska and Hawaii.

59/ An SMSA is a county or a group of contiguous counties, except in New England, containing a central city of 50,000 or more people, or "twin cities" of at least 50,000 people. In New England, towns and cities are the units used in defining SMSA's (10, table 17, p. 18).

IMPACTS OF LAND USE CHANGE

Mass migrations produce land use, tax, and other problems--both for the areas left behind and for the areas of population influx. Necessarily, both the problems and the resultant community needs and objectives differ between the two types of areas.

Problems of marginal farming areas are well known. These areas are characterized by low incomes, uneconomic farming units, scarcity of jobs, a declining tax base, and inadequate public services. Incomes need to be increased and better employment opportunities provided. Ways need to be found to facilitate land use transition from marginal farms and idle lands to economic farming units, grazing, forestry, recreation, or suitable combinations of such land uses.

Productive farming areas, too, have problems due to outmigration. Farmers in these areas are adjusting to mechanization and as mentioned, farm numbers are declining and sizes increasing rapidly. Again, the need is for better employment opportunities: in these areas, for more off-farm jobs.

Zoning problems and objectives in agricultural areas include preventing unplanned community growth. Too often, roadsides become cluttered and nuisance-type land uses are located haphazardly in places where such uses are detrimental to existing uses and future development. There is a need to protect suitable areas for agriculture, recreation, homes, business, industry, and other desirable land uses, if potentials of these areas are to be fully realized in the future.

Impacts of change are most sharp in areas of population influx, especially in the SMSA's. Here, millions of people are building new towns and suburbs that provide all the usual urban services. They are building factories, stores, and offices; homes; and schools and other public facilities. Growth is often haphazard and mixed land use areas are common. Development on the urban fringe may occur by accretion, by radiating outwards along arterial highways, or by subdivisions leapfrogging out into the open country.

Agriculture in SMSA's is also in transition. Many farms are being displaced by subdivisions or other nonfarm uses. But many remain as part-time or residential farms, and others become idle. The commercial farms may shift to a less intensive agriculture or, more often, to more intensive types of farming. Agriculture near cities is often oriented toward local markets and tends to concentrate on bulky and perishable products. Among these are fluid milk for daily consumption, fresh fruits and vegetables, nuts, poultry and eggs, and hothouse and nursery crops.

Taxes in SMSA's are usually high. Land use disagreements abound, including urban-agricultural conflicts. 60/ Other pressing problems and needs concern transportation, water supply, sewerage, storm drainage, contamination of surface and ground waters, air pollution, police and fire protection, public health, education, parks, recreation, open space, planning, zoning, and so on. Often, land, water, tax, and other resources are wasted.

60/ For a discussion of urban-agricultural conflicts, see (13, pp. 17-21).

Suburban sprawl requires a larger public investment in service facilities per housing unit served than do more compact settlements. Such public investments are costly. "A study of urbanization costs in a typical county in California revealed that before each new home--$15,000 average value--could be built by private enterprise, governmental agencies had to invest $15,000 in public facilities, such as roads and schools" (4, pp. 176-178).

Many urbanization problems and needs, both present and prospective, are areawide, calling for action at regional levels. Certainly, planning and many implementing measures, whether preventive or remedial, physical or institutional, can be more effective and less costly if applied at the metropolitan area level. But SMSA's often contain multiple units of local government, each of which guards its authority. The consequences are familiar: poorly coordinated plans and land use chaos.

ZONING REGULATIONS AUTHORIZED

Four basic and related types of zoning regulations are currently used and involve building size, building tracts (areas), population density, and use. All four types are authorized by most rural zoning enabling statutes.

Building-size regulations may be used to limit the height, number of stories, and size of buildings and other structures. Building-tract (area) regulations may be employed to regulate and restrict the size of building lots or tracts, the setback of buildings, the size of front, side, and rear yards, and the percentage of the tract that may be covered by buildings.

Population density can be influenced by building-size and building-tract (area) regulations. Large building tracts, large yards, low coverage allowances, and one-story houses result in lower population density per acre; small tracts, small yards, high coverage allowances, and multistory houses permit higher population density.

Use regulations can be employed to keep apart incompatible land uses or to prevent an unwise mixture of land uses in the future. Separate districts could be established for industry, business, homes, agriculture, forestry, recreation, and so on. In each kind of district, only the uses of land, buildings, and structures that can remain side by side in harmony need be permitted; uses that may cause harm can be excluded.

INCIDENCE OF ZONING BENEFITS

Who receives the benefits from zoning regulations? Who bears the burden or detriment? Do benefits from zoning regulations accrue to the immediate property owners only, the neighborhood only, the county, town, or township as a whole, the public at large; or do all of these share? Answers may suggest why zoning regulations are sometimes ineffective, if adopted at all.

The incidence of zoning benefits and the recipients of them may often be determined by the type or types of zoning regulations under consideration. Benefits from some zoning regulations are direct and are easily identified and

measured. But benefits from other zoning regulations frequently are indirect, intangible, and difficult to quantify.

An example of zoning with direct and measurable benefits is found in regulations protecting one-family residential zones. Here, the immediate property owner is clearly benefited. Use regulations applying in these zones exclude activities that will be harmful to the primary residential use. Minimum lot, setback, and yard regulations assure open space, and together with restrictions on building size help control population density. Direct benefits also accrue to both the immediate neighborhood and the larger community. These benefits stem from (1) the continuance of a more orderly, healthful, safe, and attractive neighborhood, (2) the existence of a more stable tax base, and (3) the residential zone itself serving as an essential part of a balanced zoning district complex.

Local benefits and burdens of residential zoning regulations both accrue indiscriminately to each homeowner in the district and can be quantified. The incidence of zoning benefits and burdens is quite different, however, if a vacant corner lot in the residential district is rezoned for a gas station. In that event, the major benefit, an enhanced lot value, will accrue to the lot owner. Adjacent property owners will bear the burden or detriment, consisting of lowered property values due to increased noise, fumes, traffic, glaring lights, and other annoyances. Again, both benefits and burdens can be measured in dollar values.

Benefits from some kinds of roadside zoning regulations accrue mostly to the traveling public, with lesser or no advantage to the landowners. Roadside zoning regulations may restrict or prohibit commercial uses and outdoor advertising and may impose setback and access controls. Public-oriented benefits result from preserving the safety and traffic-carrying capacity of the highway, and the attractiveness of the countryside. Only some of these benefits can be expressed in dollar values. The burden falls on the owners of land adjoining the road. Their interests often conflict with that of the traveling public.

Similarly, the immediate landowners will bear the burden of zoning regulations that prohibit residential development on wetlands or on lands that are subject to recurrent flooding but allow forestry, recreation, wildlife, agriculture, or other uses not prone to severe flood damage. Benefits, on the other hand, will accrue to the general public, mostly to forewarned prospective home buyers, but also to various units of government at local and higher levels. Both the benefits and the burdens can be estimated and the greater part quantified, although the benefits may be largely prospective and partly intangible.

Who benefits from zoning that protects agriculture? Who bears the burden or detriment? These questions have no ready answers. The incidence of both benefits and burden will vary greatly depending on the type of agriculture, the zoning regulations involved, the location of the area, and other factors, including the passing of time.

Various groups of people will benefit from zoning that protects productive agricultural areas from premature, haphazard conversion to nonfarm uses. First are those groups that will benefit directly from maintenance of agricultural production in the area. Included are the people on the land--the owners,

operators, and farm laborers. Another group that will benefit are the agriculturally oriented businesses and industries and their employees. This group consists of firms that process agricultural products and provide necessary supplies and services.

Benefits from the open spaces that result in protecting agriculture will accrue to urban people generally, as well as to the community at large. Foremost among urban-oriented benefits are those that shape development. Reserved open space can break up continuous urban development; prevent cities from growing together and provide greenbelts between them; establish buffers between zones; separate neighborhoods; reduce air pollution; and set up firebreaks.

These open spaces of green fields and trees will also prevent continuous ribbon development and urban monotony, lower the overall population density, and reduce pressures on travel arteries and other public facilities. Other benefits may accrue from reducing runoff, avoiding flood damages, reserving natural storm drainages, protecting watersheds and wildlife, and avoiding sprawl-inflated costs of public services. There may also be market benefits to consumers from local food production, and aesthetic values that accrue to urban people from the reserving of some natural countryside. Finally, attractive agricultural greenbelts will enhance values of adjacent residential properties.

Benefits from restricting land use in a watershed zoning district may accrue primarily to downstream water users; that is, to urban people or irrigators. Landowners in the watershed district will sustain the burden, which varies depending on the degree of land use restriction.

Benefits resulting from the creation of forest-recreation zoning districts are both local and regional, direct and indirect. Those accruing to forest landowners result primarily from lessened fire and trespass hazards and lower taxes due to fewer public services. Owners of recreational lands and the general public benefit to the extent that zoning helps maintain or improve the recreational character of the district. Other benefits derived from zoning watersheds for forest-recreation uses are stabilization of streamflows and water supply, and reduction of flood crests and silt flows. These benefits may accrue primarily to occupants of the flood plain. The burden or detriment from forest-recreation district zoning falls on any landowner who would profit from establishing a land use that is prohibited in the district. The burden from forest-recreation zoning can be readily quantified, which is far from true for some of the benefits.

Benefits and burdens resulting from zoning regulations applied in other types of zoning districts can also be identified. Indirect and intangible benefits and detriments, although difficult to measure and quantify, should not be disregarded.

BALANCING ZONING BENEFITS AND BURDENS

The preceding section discussed the incidence of zoning benefits and detriments or burdens. This section considers the legal consequences of various ratios of zoning benefits to detriments. Many courts have wrestled with problems of balancing benefits and burdens. Some general rules or guidelines have evolved.

"If the gain to the public is small--when compared with the hardship imposed upon individual property owners, no valid basis for an exercise of the police (zoning) power exists." 61/

But loss in property value or income, or both, resulting from zoning restrictions, ordinarily does not warrant relaxation in a property owner's favor because of practical difficulty or unnecessary hardship. Such loss, however, is an element which is entitled to fair and careful consideration. 62/

Another court has held that "a possible depreciation in value is not of too great significance, for the pecuniary profits of an individual are secondary to the public welfare. Either plantiffs' property or the land near it would suffer, depending on the board's action, and the board could properly find that the loss sustained by the plantiffs would be offset by the gain to the community in general." 63/

In fact, one New York court observed: "There would be little left of zoning if in order to invalidate it, all a property owner had to show was that he could make more money out of it without zoning." 64/

Apparently, the gain foregone may be substantial: "The alleged fact that 'plantiff's property' is five times as valuable for manufacturing uses as it is for residential purposes is not decisive . . . The profit that would accrue to individual property owners . . . must be weighed against the detriment to public welfare that would ensue. One property owner should not be permitted to increase the value of his property at the expense of his neighbors." 65/ But zoning that results in relatively little gain or benefit to the public while inflicting serious injury or loss on the property owners is confiscatory and void. 66/

Thus, planners and zoning officials need to consider seriously the many and varied benefits and detriments that stem from zoning regulations. Particularly, these officials should look at benefits and burdens as they relate to the newer and evolving kinds of rural zoning regulations, many aspects of which have not been brought before the courts. Research directed at quantifying public and private benefits from open-country rural zoning districts and regulations might be timely and very helpful in obtaining approval by citizens, officials, and the judiciary of new zoning regulations.

61/ Miller Bros. Lumber Co. v. City of Chicago, 111 N.E. 2d 147, 153; 414 Ill. 162 (1953). Metzenbaum, Law of Zoning, Ch. X-1(3), pp. 1430 et seq. (2nd Edit. 1955 and 1965 Cum. Supp.) and cases cited therein.

62/ First Nat. Bank & Trust Co. v. Zoning Board of Appeals, 10 A2d 691, 695; 126 Conn. 228 (1940).

63/ Shepard v. Village of Skaneateles, 89 N.E. 2d 619, 621; 300 N.Y. 115 (1949).

64/ Snyder v. Burns, 212 N.Y.S. 2d 851, 853 (1961).

65/ Miller Bros. Lumber Co. v. City of Chicago, 111 N.E. 2d 149, 154, 414 Ill. 162 (1953); see Euclid v. Amber, 272 U.S. 365, 384 (1926), where alleged value for manufacturing use was four times residential value.

66/ National Brick Company v. County of Lake, 137 N.E. 2d 494, 496, 9 Ill. 2d 191 (1956)

LOCAL ORIGIN OF ZONING ORDINANCES

The incidence of benefits from rural zoning may be local, regional, statewide, or more extensive, depending on the character of the regulations adopted. However, zoning authority customarily is vested by the State in local governments.

Empowered to zone rural areas are counties, towns or townships, certain cities and incorporated towns and villages, boroughs, fire districts, civic associations, sanitary districts, and other units, depending on the State. But land use problems and objectives in need of zoning regulation often extend across political boundaries and may be regional or wider. This situation exists in marginal as well as productive farming areas. It also usually occurs in the SMSA's.

The typical rural zoning ordinance is a local law adopted by the community to handle certain types of existing and prospective land use and related problems. The ordinance prescribes rules of conduct within the field embraced by its regulations. The field of permissible zoning regulations, however, is limited functionally by the bounds of the authority granted in the enabling law, and it is limited geographically by the boundaries of the local government empowered to zone. Also, assuming that broad zoning powers have been conferred, the scope of the regulations actually adopted often is limited in response to individual and group pressures that stem from a divergence of interest between landowners. The ordinance reflects the compromise of interests within the community and often omits certain types of regulations which are in the local public interest. One may also expect that many types of directives which would be in the general wider public interest, as distinguished from those conferring specific local benefits, are sometimes overlooked.

Consequential public decisions, moreover, are often left to private persons through legislative omission. A zoning ordinance may reflect a public interest by allowing certain practices and uses and prohibiting others. Necessarily, community sanctions favor the private interests of some landowners against those of others. Consequently, the failure of a community to adopt a particular zoning regulation which would be in the public interest may benefit certain landowners who escape regulation. Such landowners, rather than the community itself, are thus allowed to make decisions that will either beneficially or adversely affect the public interest. The character and future development of rural communities, both in marginal and productive farming areas but particularly in the changing urban fringe, may be as greatly affected by legislative inaction as by legislative action. Evolving land use problems in a dynamic rural economy call for affirmative guidance by the community. Only slight protection to agricultural values is offered by many current provisions in State rural zoning enabling laws that except agricultural activities from zoning regulation.

The public interest would be served if more zoning powers in more States were also exercised at higher levels of government. The appropriate level or combination of levels for imposing zoning regulations would seem to depend on the problem. The criterion should be whichever level can do the best job. Public interest rather than government level should be the prime concern.

GRADATIONS IN STATE CONTROL OF ZONING REGULATIONS

Legislative awareness of the limitations of zoning by local governments seems evident from various procedural provisions found in the enabling statutes. Seven gradations can be observed in rural zoning enabling laws in the type and degree of direction exercised by the States over the character of rural zoning regulations. The range is from mere grants of permissive zoning authority to State-enacted zoning ordinances. These gradations suggest ways available to the State for effecting desirable zoning ends. Also, the gradations give the reader certain guidelines or benchmarks for forming an opinion as to the probable actual effectiveness, considering current land use problems and goals, of the enabling law provisions examined in succeeding chapters.

The seven gradations of rural zoning enabling laws are as follows:

1. The permissive enabling law constitutes the State's usual means of influencing the type of rural zoning regulations. A local government's zoning power is derived from the State. The State may grant zoning powers to some classes of its rural governments and withhold them from others. Moreover, the enabling law that confers zoning power may authorize a county to adopt certain types of zoning regulations and may expressly or by implication prohibit others. The local government may exercise the powers granted or may decline or fail to zone.

2. An added measure of State control over the nature of rural zoning regulation is effected in States that aid local governments with their planning and zoning problems by providing technical guidance, as, for example, in Michigan, Nebraska, and Wisconsin. Under this second group of enabling laws, a State or regional agency is designated to prepare the original zoning plan. Local planning boards are frequently authorized to cooperate with other planning boards or agencies--Federal, State, regional, or local. Today, many counties are taking advantage of Federal assistance available for planning under the 701 program. 67/ But even where technical advice and assistance are provided, the final decision is with the local community. Only regulations deemed suitable need be adopted, or the community may decline or fail to zone.

3. A third technique for influencing the nature of rural zoning regulations is found in a few States. In the usual enabling law, the legislature negatively limits the scope of permissible zoning regulations by granting local governments the authority to adopt only certain types of regulations and by expressly or through implication prohibiting other types. Usually, certain procedural steps in the zoning process are mandatory and must be complied with if the community decides to zone. In a few enabling laws, the legislature affirmatively limited the field of choice of zoning regulations by requiring the community, if it zoned, to impose regulations of a designated sort. For example, a Florida law prohibits setback lines that are over 100 feet from the center line of roads (Fla. 38c, setback lines). Under this law, both zoning procedures and certain zoning regulations are mandatory if the unit of government decides to zone.

67/ Section 701 of the Housing Act of 1954, as amended, authorizes Federal grants to supplement State and local funds for financing timely and comprehensive planning.

4. A fourth and more direct method of controlling the nature of rural zoning regulations, employed in only a few States, reserves to the State the right to review and veto local ordinances. In Michigan, county zoning ordinances must be approved by the department of economic development before they become effective (Mich. 1c). Kansas law requires approval of local zoning regulations by a State agency (Kans. 4m). The power of veto, although negative, may be used affirmatively to achieve desirable regulations if the community is inclined strongly to zone.

5. A roadside zoning enabling law in Florida illustrates a fifth and more far-reaching approach. By this statute, the Duval County Planning Council is "directed, authorized and empowered" to divide highway protective areas into five classes of districts: commercial, industrial, residential, recreational, and agricultural (Fla. 2lc, setback lines, advertising, and so on). This law is mandatory. The community is ordered to zone and five types of zoning districts are prescribed. The area of local discretion has been greatly narrowed in the interest of the larger community.

6. A sixth approach is illustrated by a Hawaiian law. A state agency is empowered and directed to place all land in the islands in one or another of four types of zoning districts--agricultural, rural, conservation, and urban. The State zoning regulations provide a framework within which the counties may apply additional zoning regulations. County zoning must not conflict with the State zoning regulations (Hawaii 5m). 68/

7. The seventh and final gradation is exemplified by laws in Alaska, Florida, Iowa, Louisiana, Mississippi, North Carolina, Oklahoma, Rhode Island, South Dakota, and Wisconsin. Local zoning regulations in specified areas are directly imposed by the State legislature or by a State agency, and not indirectly through the usual instrumentality--the local government. 69/

Thus, under the first four types of enabling laws, the final word remains with the local unit of government, which may decline to zone. Under the remaining three laws, the decision is made at the State level.

CHAPTER V.--PLANNING REQUIRED BEFORE ZONING

The Standard State Zoning Enabling Act declares that zoning ". . . regulations shall be made in accordance with a comprehensive plan . . ." The authors of the act note that "this will prevent haphazard or piecemeal zoning. No zoning should be done without such a comprehensive study." The greater proportion of the rural zoning enabling laws contain the same or substantially similar language. 70/

68/ A 1965 amendment to a county zoning enabling statute in Minnesota prohibits towns from enacting official controls that are inconsistent with standards prescribed in official controls adopted by the county board. However, nothing is to limit any town's power to zone more restrictively than is provided in controls adopted by the county (Minn. Laws 1965, ch. 678).

69/ See section "Zoning by State" in chapter II.

70/ Funds for planning in metropolitan and regional areas are available through Title 701 of the Federal Housing Act.

Although the legislative mandate seems clear, it is highly probable that some local governments in their impatience to correct specific land use problems will occasionally adopt zoning regulations before making time-consuming and costly studies necessary for a complete, comprehensive plan. Whether such a plan is justified would depend on local circumstances in each instance. 71/ However, compliance with the comprehensive plan rule probably would ensure a more orderly, thoughtful, and successful zoning program.

But there is a related question as to what constitutes a comprehensive plan. Here, the courts are helpful. "A comprehensive plan means a general plan to control and direct the use and development of property in a municipality or a large part of it by dividing it into districts according to present and potential use of property." 72/ But how "comprehensive" does the plan have to be? A comprehensive plan has been held to be inherent within the zoning ordinance itself, if the regulations adopted consider the overall land use requirements of the entire community. 73/ Although such a plan might have been adequate for the town concerned, more involved planning should precede zoning in most communities. Certainly, urbanizing counties, towns, or townships that contain areas of both town and country will need to prepare more extensive plans. In fact, a comprehensive plan for a community that includes both town and country might well have three major components: (1) An economic, civic, and social improvement plan, (2) a land use plan, and (3) a renewable natural resource plan. Each of the three major components would consist of a number of integral plans.

The economic, civic, and social improvement plan would be concerned with improving the economic base and with the nature and location of future roads, streets, bridges, playgrounds, parks, schools, airports, public utilities, and other public and semipublic properties.

The land use plan would relate to the general location of districts for residence, business, industry, farming, forestry, recreation, watersheds, conservation, open space, and other purposes.

The renewable natural resources plan would suggest ways of best using natural resources, including land, water, forests, fish and wildlife, and areas with recreational potential.

Comprehensive planning involves three separate steps: (1) gathering facts about the community's resources, potential, and problems; (2) deciding on overall goals; and (3) making a plan that shows how the community can use what it has to achieve its goals.

71/ Cal. Stat. 1965, ch. 1880, Art. 2, § 65860 declares that "no county or city shall be required to adopt a general plan prior to the adoption of a zoning ordinance."

72/ Bishop v. Board of Zoning Appeals of City of New Haven, 53 A2d 659, 661, 133 Conn. 614 (1947); Miller v. Town Planning Commission, 113 A2d 504, 505, 142 Conn. 265 (1955).

73/ Miller v. Town Planning Commission, 142 Conn. 265, 113 A2d 504 (1955); Couch v. Zoning Commission of Town of Washington, 141 Conn. 349, 106 A2d 173 (1954). See Harr, "In accordance with a comprehensive plan." 68 Harvard Law Rev. 1154 (1955).

As the building materials of planning, facts are needed about existing private and public improvements and land uses, economic base and trends, people and their problems, local government and finance, and many other items. The planning board must decide what facts it needs and collect them.

Planning that precedes zoning in rural areas, however, will benefit from additional data. Information on natural resources is required before open-country zoning districts can be created realistically. Facts are needed on resources, problems, and potentials relating to land, soils, conservation, agriculture, forestry, water, recreation, and fish and wildlife within the planning area. Two examples of useful data are discussed below.

Use of Soil Data

Farmers today are quite familiar with the value of soils data in planning farm layout and operations. Based on certain physical properties, soils have been grouped into one or another of eight broad land use capability classes, which in declining order from one to eight indicate suitability for farming.

In recent years, both urban and rural planners have been making increasing use of soil survey data to prepare community and land use plans and to guide public and private physical improvements. The value to planners of soil data has been greatly enhanced by the development of soil survey interpretation maps indicating soil suitability or relationship for the following:

1. Business and industrial sites, highways, schools and institutional sites, roads, homesites, and sewage effluent disposal;

2. Damsites; ponds; delineating flood plains; and athletic fields and recreation areas including bridle and foot paths, golf courses, and camping and picnic grounds;

3. Sources of sand, gravel, industrial clays, and borrow materials for fill or topsoil;

4. Sanitary land fills; development of wetland for waterfowl; low, moderate, or high runoff potential; and infiltration fields to recharge ground waters; and

5. Woodlands, agriculture, and determination of agricultural value for tax assessment.

Use of Agricultural Resource Information

Land use capability ratings and maps are invaluable for ascertaining the most suitable areas for agriculture, including the establishing of farm zoning district boundaries. Both the most productive agricultural areas and the areas that are submarginal for farming can be identified.

Also important in planning rural areas are related agricultural data, such as acreage and value of farmland and improvements; size, type, and ownership of farms; and value of irrigation, drainage, and conservation facilities. Additional relevant data are type and value of crops harvested and livestock and poultry produced, as well as agricultural employment numbers.

Productive farmland should not be judged undeveloped, as is done by some planners. Premature conversion of fertile soils to nonfarm uses often generates economic shock waves that reach the city. Planning data should first be obtained for urban business enterprises which are most closely related to agriculture; such as farm supply and service firms, marketing outlets, processing industries, and related employment. Pertinent data for these businesses would include numbers of firms, investments, gross sales, numbers of employees, and payroll. Comparable information on forestry, water, recreation, and fish and wildlife resources may be needed also.

PLANNING FROM A REGIONAL VIEWPOINT

Comprehensive plans in the past often have been formulated as needed for local areas by local governments, such as counties or towns, but experience has shown that effective planning cannot be isolated by political boundaries. Local communities today are increasingly affected by what transpires beyond their respective territorial limits.

Urbanization in recent years has occurred mostly in metropolitan areas--areas with multiple units of government. This metropolitan growth has necessitated new highways, water and sewer mains, and other public facilities that call for planning and action at the regional level. Regional planning and action may also be needed to prevent wasteful urban sprawl, to provide major open-space areas, and to protect the agricultural base of local processing industries and service trades. Plans for local communities need to be made with a realistic awareness of the plans of neighbors and of the metropolitan region. In recent years, State legislatures have adopted numerous enabling laws that authorize regional planning.

THE ZONING PLAN

Before a unit of government can use its zoning powers, a zoning plan and public hearings are needed. The zoning plan includes a proposed zoning map, suggesting boundaries of zoning districts; and it contains the text of the proposed zoning ordinance, with zoning regulations to be applied in each type of zoning district. The zoning plan is based on the comprehensive plan, often called the general or master plan, which has been discussed previously.

Many rural zoning enabling laws authorize the governing bodies of counties, towns or townships, and other units of government to establish or designate a variety of boards or commissions to prepare the zoning plan. Usually, the county or town board is authorized to establish a planning or zoning commission or board to recommend boundaries and regulations for proposed zoning districts (Ala. 1c; Ark. 1c; Conn. 1t). Or the governing body may be empowered to

designate an existing planning commission or board to prepare and transmit the zoning plan (Ala. 1c). Under other statutes, the zoning plan is prepared by a zoning commission (Idaho 1c; Iowa 1c), or by a combined planning and zoning commission (Ariz. 1c; Conn. 1t). In Richland County, S.C., the president of the Columbia Home Builders Association is designated an ex officio member of the county planning board with voting rights (S.C. 1c).

A few enabling laws provide that the local governing body may constitute the planning commission. In Colorado and Utah, zoning plans for counties having a population of 15,000 or less may be prepared by the board of county commissioners (Colo. 1c; Utah 1c). In Massachusetts, this task may be performed by boards of selectmen of towns (Mass. 1t). In Minnesota, proposed zoning ordinances may be prepared by the county board with the approval of town boards (Minn. 1c); and in Pennsylvania and Wisconsin, a committee which includes members of the county board may constitute the planning or zoning committee (Pa. 1c; Wis. 1c).

REGIONAL PLANNING COMMISSION

Some other variations for preparing zoning plans are found in the enabling laws. Under one variation, the zoning plan may be prepared by a regional planning commission. In Tennessee, the State planning commission may define and create planning regions. Within these, a regional planning commission prepares, recommends, and certifies to the county court the zoning plan, including the ordinance and maps (Tenn. 1c). In Ohio, the township board may appoint qualified members of the county or regional planning commission to the township zoning commission (Ohio 2t).

The zoning plan for Montgomery and Prince Georges Counties in Maryland, adjacent to Washington, D.C., is prepared by a regional agency, the Maryland-National Capital Park and Planning Commission (Md. 7c).

Under an Oklahoma statute, a county and city may cooperate in forming a metropolitan-area planning commission (Okla. 1c); and in Georgia, municipal-county planning commissions may be formed by two or more counties and cities (Ga. 1c). A North Dakota statute provides for nine-member county planning commissions appointed by the county board. Two of the nine must be from the county board, two from the council of the county seat, and the remaining five from the county-at-large (N. Dak. 1c). Joint, regional, or city-county planning commissions may be formed in many other States, including Hawaii, Indiana, Kentucky, North Carolina, South Dakota, and Vermont. 74/

FRINGE-AREA PLANNING

Several States authorize cities and towns to zone limited areas outside their boundaries. Planning arrangements vary. Some statutes in Nebraska and

74/ Hawaii 1c; Ind. 2c; Ky. 1c; N.C. 1c; S. Dak. 1c; Vt. 1t. Also see Ill. Laws 1965, pp. 2514-2515, which allow joint regional planning commissions to prepare county zoning ordinances. For a list of regional planning statutes by State see (5).

North Carolina require the zoning plans for these fringe areas to be prepared by municipal planning commissions (Nebr. 5m; N.C. 21m).

Many North Carolina laws require zoning plans for fringe areas to be prepared by an enlarged city fringe-area planning board or zoning commission. The additional members, usually but not necessarily equal in number to municipal members, must be residents of the fringe area and are appointed by the county board (N.C. 12m, 14m, 15m, 33m, 42m) or the municipal council (N.C. 21m, 22m, 27m, 29m, 30m) upon recommendation of the county board (N.C. 23m, 41m).

PLANNING ADVISORY COMMISSIONS

Citizen advisory councils or committees may be established by metropolitan planning commissions in Indiana (Ind. 2c). Similarly, in Minnesota, planning advisory commissions may be appointed by the chairman of county boards (Minn. 2c). Another Indiana statute requires fair representation of both urban and rural population on area planning commissions (Ind. 3c). And under a Nebraska law, an advisory committee, appointed by the county board, assists the city planning commission with the zoning plan for 3-mile fringe areas. The advisory group is comprised of five persons residing and owning property within the zone (Nebr. 6m).

REVIEWING ZONING PLANS

Statutes in a number of States require zoning plans to be reviewed and approved by planning commissions of the county or of larger planning areas. In Colorado, any zoning plan that is not local and is for part or all of a county must be reviewed by the coordinator of State planning (Colo. 1c). Proposed township zoning ordinances in Ohio are to be submitted for approval, disapproval, or suggestions to the county or regional planning commission (Ohio 2t). Also, in Michigan, such township zoning ordinances must be submitted for approval to the county zoning commission or, if none exists, to a coordinating zoning committee of the county (Mich. 2t). Similarly, proposed county zoning ordinances must be submitted for approval to the Michigan Department of Economic Development (Mich. 1c).

OTHER ZONING PLANS

Rhode Island, Connecticut, and several other States authorize the creation of historic district commissions to prepare zoning plans for historic areas. 75/ In Kansas and Oklahoma, State agencies may both prepare and adopt the zoning plan for districts containing certain State buildings (Kans. 4m; Okla. 3m, 4m). The Governor of Florida, under an unusual act, may appoint a zoning commission to prepare and adopt a county zoning ordinance (Fla. 34m).

A 1957 Hawaiian statute, as amended, authorized regulations for and boundaries of forest and water reserve zones to be prepared and enacted by the department of land and natural resources (Hawaii 4m). A more recent act empowered

75/ See section "Historic and Other Districts" in chapter VI.

the State land use commission, appointed by the Governor, to prepare and adopt a basic zoning plan for all of the islands (Hawaii 5m).

CHAPTER VI.--REGULATORY TOOLS OF ZONING

Zoning ordinances are local laws that are concerned with the nature and use of buildings, structures, and land. These ordinances consist of two main parts: (1) the text, comprised of the zoning regulations; and (2) the map or maps, showing how the community is divided into several kinds of zoning districts. The zoning regulations that are applied differ by kinds of zoning districts.

KINDS OF ZONING REGULATIONS AUTHORIZED

As mentioned, four main classes of zoning regulations are authorized by the rural zoning enabling statutes. For brevity, these are termed building-size regulations, building-tract (area) regulations, and use regulations. The fourth class, population-density regulations, often results from exercise of the other three classes.

All four classes are suggested by the standard act, which provides essentially as follows: "For the purpose of promoting health, safety, morals, or the general welfare, the legislative body of cities and incorporated villages is hereby empowered to regulate and restrict:

1. "The height, number of stories, and size of buildings and other structures;

2. "The percentage of lot that may be occupied, the size of yards, courts, and other open spaces;

3. "The density of populations; and

4. "The location and use of buildings, structures, and land for trade, industry, residence, or other purposes" (14).

Although the standard act has served as the pattern, there are many variations in the grant of zoning powers. A large proportion of the acts confer authority to enact all four classes of regulations; others limit the authority granted to one or two classes or modify the powers conferred by varying or omitting some of the elements in the four classes.

As mentioned, zoning powers granted a unit of government by the statute discussed below may be limited, modified, or prohibited by constitutional provisions or court decisions that apply in the jurisdiction.

Building-Size Regulations

With building-size regulations, the empowered local governments and other zoning agencies may regulate the height, number of stories, and size of buildings and other structures. Regulations of this type are useful in crowded urban and suburban areas. They are seldom applied to farm properties, aside from the farm residences.

The choice of words used in the enabling laws in granting authority to apply such regulations deserves careful thought. Well over half the laws follow the standard act and authorize regulation of height, number of stories, and size of both buildings and structures. The remainder omit one, more than one, or all of these terms and add other language. Authority to regulate and restrict the height of buildings, if the word "height" is narrowly construed, might not include the power to limit the number of stories. Also, the power to regulate size might be interpreted as more embracing than the power to regulate building "area" or "bulk." Numerous variations in combinations of these descriptive terms are found in the enabling statutes. In twoscore acts, the word "bulk" appears, either as an additional term or as replacement for the words "size" or "number of stories" (Calif. 1c; Colo. 1c). The phrases "area and bulk" (Maine 1t) and "kind and dimensions" are also used (Ga. 12c, 27c).

Several enabling laws, including two in Indiana, expressly authorize regulation of floor space (Ind. 2c, 3c). Both Connecticut and Georgia permit selected local governments to establish minimum floor areas for buildings and structures (Conn. 35t; Ga. 17c). In Kansas, certain counties may designate the minimum ground-floor area of residences (Kans. 1c), or the minimum size of residences (Kans. 3c). The size of habitable rooms on the urban fringe may be regulated by cities under a Nebraska law (Nebr. 4m). And in Massachusetts, towns may regulate " . . . the floor area of the living space of a single-family residential building . . . ," but the minimum established may not be greater than 768 square feet (Mass. 1t).

Certain enabling acts in Connecticut and North Carolina authorize regulation of the type of buildings (Conn. 42t; N.C. 2c). Group housing consisting of three or more single-family dwellings erected as a single detached building is prohibited in one Maryland county (Md. 3c). A Georgia law and a Connecticut law, respectively, empower a county and town board to regulate the design and exterior architectural features of buildings and structures (Ga. 17c; Conn. 22t). Many of the Connecticut enabling laws permit regulation of the height and size of advertising signs and billboards (Conn. 9-37t).

A few enabling laws expressly authorize regulations that limit the number of buildings or other structures which may be placed on one lot or acreage (N.C. 9c; Iowa 1c), or regulate the relocation and moving of buildings and structures (Fla. 33c). Tents, cabins, and trailer coaches are subject to zoning regulations in Ohio and Michigan (Ohio 1c, 2t; Mich. 2t). Nearly one-half the zoning enabling laws in Florida empower counties to regulate buildings and structures on both land and water.

Building-Tract Regulations

About two-thirds of the zoning enabling laws are patterned after the standard act which empowers zoning agencies to regulate and restrict "the percentage of lot that may be occupied, the size of yards, courts, and other open spaces." Some acts contain additional terms expressly permitting regulation of lot size (Colo. 1c; Ga. 3c) or the establishment of building setback lines (Fla. 57c; Miss. 2m; Ill. 2c; N.J. 2t), although these powers usually are implied from broader language.

With building-tract regulations, a community can prescribe minimum sizes of lots and tracts, minimum setbacks, side and rear yards, and permissible lot coverage. Possibly, either minimums or maximums, or both may be designated. Although only minimums are usually set by the zoning ordinances, two enabling statutes clearly permit the prescribing of maximums too. One of these, a Hawaiian enabling law, confers zoning powers that may relate both to minimum and maximum lot sizes (Hawaii 3c). Similarly, a Minnesota statute authorizes regulations designating or limiting the minimum and maximum sizes of yards, courts, or other open spaces (Minn. 2c). Building-tract regulations may be useful in both town and country. Suitable minimum-sized building tracts can prevent overcrowding in residential districts on the urban fringe. Larger tracts may be required for sanitary reasons in areas served by private wells and septic tanks, or by only one of these. Minimum tracts of 5 to 10 acres or more may help retard urbanization of productive farming areas needed for agriculture.

A profusion of enabling laws are concerned with setback lines. A reasonable setback of buildings from the road or street reduces the noise, dust, and gas fumes that can reach a house, thus promoting health and safety. A few examples of statutory provisions authorizing setback lines are of interest. The only regulatory power conferred on counties by one Illinois act is the authority to establish, regulate, and limit building or setback lines along any road, street, trafficway, drive, or parkway (Ill. 2c). The State highway commission is empowered to establish and enforce setback regulations by a Mississippi law (Miss. 2m).

Neither the Illinois nor the Mississippi law requires a uniform setback throughout each county or throughout the State. Presumably, the depth of setback lines may vary with the class of highway, in accordance with need. Also, the setback might vary with the roadside land use--agricultural, residential, commercial, or industrial. Deep setback lines in commercial areas might encourage shopping centers and discourage ribbon business development; or possibly, deep setback lines might encourage commercial development that provides space for offstreet parking in front of stores.

Illinois, Kentucky, and other States exempt agricultural activities, buildings, and structures from zoning regulations, except for building or setback lines (Ill. 1c; Ky. 1c). In Florida, several enabling laws that authorize setbacks have only local application. One authorizes setback lines along State and county roads (Fla. 57c). Another prohibits setback lines that are deeper than 25 feet from the edge of the right-of-way. The same law authorizes public control of the number and location of access roads (Fla. 14c). A third law authorizes setback lines but not at a greater distance than 100 feet from the center line of existing or proposed highways. Construction within the setback areas of new fences or improvements to facilitate ingress and egress is allowed without reservation, but height and type of fence may be regulated. Persons who erect new buildings or other structures in the setback areas are not entitled to compensation for their value upon later public acquisition of the rights-of-way (Fla. 48c). Oklahoma and Missouri laws authorize establishment of setbacks along planned highways also (Okla. 1c-2c; Mo. 1c-3c). And in South Carolina, certain counties may vary setback lines along existing or proposed streets and

highways to avoid undue hardship. However, the variance granted is to increase the cost of widening or opening the facility as little as practicable. Reasonable conditions may be imposed (S.C. 1c).

Aesthetic values on roadsides are a concern of several statutes. Martin County, Fla., for example, may regulate and control the planting of trees and shrubs within 40 feet of the center line of highways (Fla. 36c). In New Hampshire, machinery or motor vehicle junkyards are not permitted within 150 feet of any highway unless they are completely screened from roadside view (N.H. 2t). 76/

A few enabling laws include authorizations that relate to waterways. Counties in Michigan may establish setback lines in areas subject to beach erosion (Mich. 1c). In Hawaii, counties may regulate the use of areas along natural watercourses (Hawaii 3c), and Washington counties may regulate the setback of buildings along highways, parks, or public water frontages (Wash. 1c). Under provisions of three Illinois laws, building lines may be established along storm or floodwater runoff channels or basins, as well as along streets, trafficways, drives, and parkways (Ill. 1c, 3t, 4m). Finally, in Texas, the Harris County Flood Control District may establish and maintain building setback lines along any waterway within the boundaries of the district (Tex. 2m).

Population-Density Regulations

Power to regulate and restrict "the density of population," the broad wording of the standard act, is expressly granted by about two-thirds of the rural zoning enabling statutes. Broader powers, perhaps, are conferred by the phrase "the density and distribution of population," which is employed by laws in Hawaii, Georgia, Maryland, and Tennessee (Hawaii 3c; Ga. 16c; Md. 7c; and Tenn. 13c). Provisions of a Minnesota statute seem designed for problems of both town and country, including the urban fringe in between. The statute authorizes adoption of regulations to avoid too great a concentration or scattering of population (Minn. 2c).

A few enabling statutes contain other expressions that are quite limited in meaning. Among these are the authority to regulate the number of families which may be housed per acre of land (Md. 6c, 9m); and the power to limit and restrict the maximum number of families which may be housed in buildings or dwellings (Mich. 1c; Tenn. 4c), including tents and trailers (Mich. 2t).

A number of zoning measures, such as building-size and building-tract regulations, can be used to influence population densities. As mentioned, large building tracts, large yards, and one-story houses result in lower population densities, while smaller tracts, smaller yards, and multistory houses create higher densities. Also, several kinds of residential districts can be established. Apartments can be excluded from one-family and two-family zones. A similar objective can be attained by excluding nonfarm homes and subdivisions from selected farm zoning districts.

76/ Florida laws dealing with junkyards are identified in appendix II.

A community may have many reasons for controlling population densities. It may want to create a variety of residential districts, including zones for one-family dwellings, two-family housing units, and apartments. It may want to prevent undue crowding of land with its threat of future slums. The community may want to protect property values and the tax base. Other aims may be to prevent population concentrations that will overtax water or sewer mains, drainage facilities, and roads, or that will necessitate costly additions to schools. For sanitary reasons, the community may want lower population densities in areas served by individual septic tanks and wells. Or the community may want to avoid a wasteful scattering of population that could unduly increase the cost of public facilities and services. Controlling population density applies equally to farming and forested areas and the urban fringe.

Use Regulations

Use regulations are the most important of the four main classes of zoning regulations. These regulations may be employed to keep incompatible land uses apart or to prevent an unwise mixture of land uses in the future. They can prevent land use conflicts both in town and open country, and most beneficially in the expanding urban fringe.

More than 40 percent of the zoning enabling laws are patterned after the standard act which confers power to regulate and restrict ". . . the location and use of buildings, structures, and land for trade, industry, residence, or other purposes." The same language appears in another 15 percent of the laws, except that the words "other purposes" are replaced by the phrase "other specific uses."

"Other purposes" is a catchall phrase that by implication allows zoning regulations of any use. Does it also allow regulation of all land uses in the open country? Possible doubts as to many rural land uses are resolved by express language in some enabling laws. Powers conferred by such laws in six States expressly include regulation of the use of land for recreation, agriculture, water supply, conservation, soil conservation, forestry, or other purposes. 77/ Explicit authority to regulate land use for recreation and agriculture is conferred by 50 or more laws in 20 States. But other enabling laws, including some laws in these same States, exempt agriculture from zoning regulations. 78/ A remaining group of enabling laws authorize zoning regulations for a diversity of less frequently listed purposes; such as grazing, irrigation, public and civic activities, drainage, sanitation, water conservation, flood control, and fisheries.

Exemption of Agriculture

Nearly 40 zoning enabling statutes in 22 States exempt agriculture from zoning regulations (app. table 3). In Delaware, the exemption is found in the constitution. Most of these enabling statutes prohibit any regulation of the

77/ Ga. 1c, 7c, 9c, 18c; Mich. 1c, 2t; Minn. 1c, 2c, 4t, 5t; S.C. 1c; S. Dak. 1c; and Tenn. 1c.

78/ Agricultural and other exemptions are discussed in succeeding sections.

use for agricultural purposes of both land and buildings. Also enjoined is any regulation of construction and repair of farm buildings and structures. Laws in Rhode Island declare void any zoning regulations that interfere with farming or agriculture or with full and complete use of land and buildings for agricultural purposes (R.I. 5t, 7t, 8t). Less inclusive exemptions are found in other States.

An Arizona act exempts grazing and general agriculture on tracts containing 2 acres or more (Ariz. 1c). A similar exemption in Idaho applies to tracts of 5 acres or more (Idaho 1c). A Tennessee statute grants a general exemption from zoning regulations of farmland and buildings, except livestock, small animals, and poultry enterprises in areas zoned residential (Tenn. 6c).

Farm properties in Iowa and Kansas are exempt while used for agricultural purposes (Iowa 1c; Kans. 1c, 2c, 3c). Under a Maryland law, land is exempt when used for farming or other agricultural uses exclusively (Md. 7c). Laws in North Carolina expressly exclude from the zoning exemption those portions of farm premises that are used for commercial or nonfarm purposes (N.C. 1c, 3c, 8c).

Farm buildings must observe setback lines in Illinois and Kentucky (Ill. 1c; Ky. 1c). The agricultural exemption in Mississippi, as in many other States, forbids requiring permits for agricultural purposes or for repairs and improvements to farm buildings. Apparently, the Mississippi exemption applies outside corporate limits only (Miss. 1c). A Tennessee statute exempts agricultural land and buildings, but building permits may be required on farmland bordering or near highways built with State and Federal aid, public airports, or public parks (Tenn. 1c). An interesting provision in a Massachusetts zoning enabling law prohibits the use of zoning to regulate idle nonconforming agricultural, horticultural, or floricultural land so as to shorten the land's nonconforming life. Nonuse must have existed less than 5 years (Mass. 1t).

In a few States, the agricultural exemption expressly includes grazing (Mont. 1c; Oreg. 1c) and ranching operations (Ariz. 1c); stockraising (Ky. 1c); and livestock operations (Nebr. 5m; N.C. 6c). Forestry, or the growing of timber, is expressly exempted by zoning enabling laws in three States (Md. 1c; Mont. 1c; Mo. 1c, 3c).

Miscellaneous Exemptions

A variety of nonfarmland uses or activities are exempted from zoning regulation by one or more enabling laws in a score of States (app. table 3). Several States except facilities of public utilities from local zoning regulations, usually at the request of the State public utilities commission after public hearing. 79/ But Colorado requires that the planning commission approve the location of any public works. To override its disapproval requires a favorable vote of a majority of all members of the board of supervisors. Only existing public utility facilities are exempt (Colo. 1c).

79/ See Ill. 1c; Maine 1t; Mass. 1t; Minn. 1c; Mo. 1c; N.H. 1t; N.J. 1t; Ohio 1c, 2t; Okla. 1c; Pa. 1c; and Vt. 1t.

Some enabling laws prohibit local interference with mining and metallurgy; 80/ strip mining (Mo. 3c); and oil and gas wells (Mich. 1c, 2t; Okla. 2c). Quarries and gravel pits are exempt by a Minnesota law (Minn. 1c).

Under a Massachusetts zoning enabling law, church and school properties are excepted from regulation (Mass. 1t), as are hunting and fishing cabins under an early Minnesota act (Minn. 1c).

One Kansas zoning enabling law allows reasonable regulation of outdoor advertising in business and industrial zones (Kans. 1c). Another Kansas law permits such advertising without restriction except in areas set aside for residential or recreational purposes only (Kans. 3c). An unusual provision in a county zoning enabling law in Missouri permits commercial structures in all districts except those zoned for residential or recreational use (Mo. 3c).

ZONING DISTRICTS AUTHORIZED

In zoning, the community is usually divided into several classes of zoning districts--agricultural, residential, commercial, industrial, and so on. The various kinds of zoning regulations that have been discussed--building-size, building-tract, population-density, and use regulations--are applied, but different regulations are used for each type of district. There are some exceptions, however. A few zoning regulations are not applied by district, but instead, are applied expressly to specific properties or classes of properties.

The standard zoning enabling act grants broad authority to create zoning districts as needed. "For any and all of said purposes, the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this act . . ." (14). Most of the rural zoning enabling laws include the same or very similar provisions.

Apparently, a variety of use, building-height, and building-tract (area) districts can be established under language of the model act as long as the purposes of zoning authorized in the act are served. Evidently, this broad power also authorizes subclasses of use districts, as well as both exclusive- and cumulative-type zones.

A few enabling laws contain express provisions concerning types of use districts. The Arizona act declares that the county plan shall provide for zoning districts appropriate for various classes of residential, business, and industrial uses (Ariz. 1c). Similarly, an Indiana act authorizes zoning districts based on land uses classified according to agricultural, industrial, commercial, and residential uses and all reasonable subdivisions of these uses (Ind. 2c). A North Carolina act requires cumulative zoning districts and prescribes three types: residential-industrial-business, residential-business, and residential (N.C. 11m). One recently superseded enabling law in Oklahoma apparently required exclusive-type zoning districts. "The classification of the various uses of land and buildings shall provide separate subdistricts for

80/ Ariz. 1c; Idaho 1c; Ind. 1c; Minn. 1c; Wyo. 1c.

single-family dwellings, two-family dwellings, multiple-family dwellings; commercial areas devoted to small shops or stores designed to serve limited residential areas, and less restrictive business and industrial uses" (Okla. 4m). A second superseded Oklahoma act declared that the classification may provide for similar separate subdistricts (Okla. 3m).

The legislative directive in a Hawaiian zoning enabling law is clear. "There shall be four major classes of uses to which all lands in the State shall be put: urban, rural, agricultural and conservation. The commission shall group contiguous land areas suitable for inclusion in one of these four major uses into districts." Within the urban, rural, and agricultural districts, subzones and regulations may be established by counties. Zoning powers within conservation districts are exercised by the department of land and natural resources (Hawaii 5m). An earlier Hawaiian enabling law was equally direct. "There are hereby established forest and water reserve zones in each of the counties. . . . The department may establish subzones within the forest and water reserve zones. . . ." (Hawaii 4m).

Interim Ordinances

Zoning enabling laws in a number of States, such as California and Washington, authorize as an urgency measure the adoption of temporary or interim zoning ordinances (Calif. 1c; Wash. 2c). Utah counties and Vermont townships, pending completion of a zoning plan, may adopt temporary zoning regulations by resolution, without public hearing. Such regulations are effective for a limited period only, which may never exceed 6 months in Utah (Utah 1c) and 2 years in Vermont (Vt. 1t). Governing bodies of Oregon counties may adopt interim or land use zoning ordinances, that have been prepared by their planning commissions, after preliminary studies or hearings on the proposed zoning ordinances. Similarly, counties without planning commissions may adopt such ordinances after certain conditions are met. Their governing bodies must in good faith intend to create a planning commission and must also direct such a commission to conduct studies and hearings, without delay, on a comprehensive land use plan and zoning ordinance. Interim zoning ordinances, adopted for not more than 3 years, may prohibit any construction, alteration, use, or transfer that is reasonably expected to conflict with the proposed ordinance (Oreg. 1c).

Certain county councils in Indiana, pending adoption of a unified city-county zoning ordinance, may reenact the existing zoning ordinances and, in the same resolution, are to zone all remaining land for residential or agricultural uses only (Ind. 2c). An interim zoning ordinance, adopted by the Florida legislature, was designed to protect certain residential areas, pending passage of a local zoning ordinance (Fla. 34m).

Industrial Districts

Nearly three-fourths of the enabling laws examined confer express and broad power to establish zones for industry. The number of districts and their type--exclusive or cumulative, or for light or heavy industry--are generally matters for local decision.

A few innovations were noted in enabling laws involving industry. An Indiana law authorizes counties to provide for performance standards in their zoning ordinances (Ind. 2c). Possibly similar regulations were authorized by an early special act in Connecticut which permitted selected uses to be excluded or subjected to reasonable requirements of a special nature (Conn. 42t) Towns in Rhode Island may designate the places where noxious or offensive trades, including slaughterhouses, can be carried on (R.I. 2t).

Special procedures for establishing exclusive-type industrial districts are provided by enabling laws in Nebraska and South Carolina. Under the Nebraska law, owners of contiguous rural tracts totaling 20 acres or more may petition the county board to designate these tracts as an industrial area. The board, after public notice and hearing, may reserve the tracts for industrial purposes only if it finds that the owners have consented, the tracts are suitable, and the community will benefit. Reserved areas with a total assessed valuation of more than $100,000 may not be annexed by a city or village unless owners of these areas consent. Exclusive zoning jurisdictions remain with the county board. Districts may be enlarged by adding contiguous areas of 10 or more acres, again after petition, notice, and hearing. The owners of reserved areas are to provide at their own expense for water, electricity, sewer, and fire and police protection (Nebr. 3c).

A South Carolina law authorizes creation of the Lexington County Planning and Development Board to promote agricultural, industrial, and commercial expansion in the county. Consisting of nine members, the board is appointed by the Governor on recommendation of the county legislative delegation, including the senator. The board is empowered to designate certain rural areas as industrial. Publication and filing a description of the areas with the county clerk constitute notice that the areas are industrial. Procedures are provided for receiving applications for location. No business may be established in the industrial areas without written consent of the board (S.C. 6c).

Commercial Districts

Zoning districts for trade, like districts for industry, are expressly authorized by three-fourths of the rural zoning enabling laws examined. Commercial districts may be established also under provisions of many other enabling laws which are not closely patterned after the standard act. Usually, broad powers are conferred, leaving decisions as to number and types of commercial zones--exclusive or cumulative, neighborhood, community, or regional--for local decision. There are exceptions, of course, such as the two recently superseded Oklahoma enabling laws which specified the kinds of commercial districts to be established (Okla. 3m, 4m).

Judging by the frequent special legislative attention given, some types of commercial activity cause problems in many States. Among these types are billboards, junkyards, gas stations, taverns, and trailer camps.

Billboards

A general zoning enabling statute in Connecticut expressly empowers any town to regulate ". . . the height, size and location of advertising signs and billboards" (Conn. 1t). Numerous special laws in Connecticut and a few in Florida and Georgia confer similar powers (Fla. 36c; Ga. 26c). Certain counties in Missouri also are expressly permitted to regulate signs (Mo. 2c). Outdoor advertising, under provisions of a Kansas statute, is classified as a business use and is permitted in commercial and industrial zoning districts, subject to reasonable regulation as to size, height, location of buildings, and setback from property lines (Kans. 1c). In other Kansas counties, outdoor advertising signs may not be prohibited or restricted, except in areas set aside for residential or recreational purposes (Kans. 3c). 81/

Junkyards

Many Florida zoning enabling statutes contain express provisions authorizing regulation of the use of land for junkyards. 82/ Other acts confer power to require existing automobile junkyards, junkyards of any kind, or premises used for storing building material or equipment to be fenced from view. Prior approval of location of such yards and premises may be required (Fla. 8c, 20c).

Connecticut defines a motor vehicle junkyard as any place of storage of two or more unregistered and unusable motor vehicles or of discarded parts of equal bulk. The selectmen of any town, in lieu of a town planning or zoning board, may create restricted districts in which motor vehicle junkyards are not permitted. Anyone desiring to establish such a junkyard must obtain a certificate of approval of location from local officials, and a license, renewable annually, from the commissioner of motor vehicles (Conn. 5t).

In New Hampshire, no license can be granted to operate a new motor vehicle junkyard or machinery junkyard that is located less than 660 feet from classes 1 to 3 highways or less than 300 feet from classes 4 to 6 highways (N.H. 2t) In like vein, unlawfully established junkyards may be abated as public nuisances under provisions of two Tennessee acts. One act, applicable in Greene County, Tenn., forbids maintenance of any junkyard within 500 feet of the property line of any church, synagogue, temple, chapel, or other place of worship. The act defines junkyards as any place where three or more incapacitated motor vehicles are kept to be sold for junk as a whole or in parts (Tenn. 14c).

The other Tennessee act requires a permit to establish or enlarge any auto junkyard. Legislative bodies of both county and municipality must approve if the proposed yard is to be located within any city or within 3 miles of its boundaries. Applications must include a map and general plan of operation. Unless the proposed yard complies with laws regulating such yards and conforms with the general plan of the county, city, or town, a permit may be denied.

81/ Also see Fla. 4c, 5c, 6c, 8c, 10c, 19c, 22c, 30c, 31c, 32c, 40c, 43c, 45c, 46c, 48c, 54c, 57c.

82/ See section "Zoning by the State" in chapter II for a discussion of laws that authorize regulation of billboards along interstate and primary highways.

Also, a permit may be denied if the proposed location or operation will adversely affect public peace, health, safety, comfort, or the general welfare. Other factors to be considered are the type of district, suitability of the location for junkyard use, conservation of property values, direction of building growth, congestion on highways, and proposed extension of streets, highways, and sewer and water mains (Tenn. 15c).

Gas Stations

Two statutes concern the location of gasoline service stations. Before a gas station may be established along any major highway or in certain towns in Connecticut, a certificate of approval of location must be obtained from the local board of appeals or, in some cases, from other local officials. Among factors weighed in determining suitability of the site are proximity to schools, churches, and other places of public gathering, width of highway, and traffic conditions. The certificate is presented to the commissioner of motor vehicles who may then issue a license (Conn. 7t).

In Louisiana, a petition to the parish police jury for a permit to establish a garage or oil business must be accompanied by written assent of the majority of the property owners within 300 feet, measured along the road, of the proposed location (La. 1c).

Residential Districts

About three-fourths of the rural zoning enabling statutes examined follow the pattern of the standard act which includes express language authorizing creation of residential zoning districts. Such districts are also authorized by general language in many of the remaining statutes. With few exceptions, decisions as to number and type of districts established are left to the locality.

Exceptions were found in Oklahoma, where the two recently superseded statutes required land use classification to provide separate districts for single-family dwellings, two-family dwellings, and multiple-family dwellings (Okla. 3m, 4m). The intensity of use of lands and buildings could not be limited to less than one family per lot of 2 acres (Okla. 4m). Single-family residences located on separate parcels of 20 acres or more are exempt from building and construction codes (Okla. 2c).

Zoning ordinances in Massachusetts may provide that land deemed subject to seasonal or periodic flooding is not to be used for residences or other purposes in such a manner as to endanger health or safety of the occupants. The same statute declares invalid zoning regulations which require the floor area of living space of a single-family residential building to be greater than 768 square feet (Mass. 1t).

Zoning enabling statutes in a number of States include provisions relating to portable housing. Wide powers are conferred on Iowa counties to regulate, restrict, and prohibit residential use of tents, trailers, and portable or

potentially portable structures (Iowa 1c). Similar broad powers are conferred on certain counties in South Carolina (S.C. 3c). In Nebraska, counties may regulate and restrict location and use of automobile trailers and house trailers (Nebr. 1c). Town zoning regulations in Michigan may limit location of tents, trailer coaches, and migratory labor camps (Mich. 2t). In Wisconsin, counties are expressly empowered to regulate and restrict trailer camps, tourist camps and motels, and mobile home parks (Wis. 1c). A special statute for Lee County, Fla., authorizes the county board to regulate repair or demolition of existing structures deemed dangerous as fire or hurricane hazards (Fla. 30c).

Planned Residential Development

In recent years, conventional lot-by-lot zoning has been subjected to increasing criticism. Several reasons are advanced for this growing disfavor. Conventional zoning is said to be too rigid and inflexible. The result is look-alike residential development--tiresome rows of equally spaced houses, each carefully placed on its lot. Additionally, land resources are wasted, urban sprawl develops, and no usable open space is provided for playgrounds and other public uses. A wasteful amount of public and private funds is expended for construction and maintenance of extra mileage in roads and streets, and sewer, water, gas, electric, and telephone lines. Finally, conventional zoning is said to result in excessive soil erosion and destruction of ground cover, because of the land leveling operations required to prepare the land for lot-by-lot development.

An alternative to lot-by-lot zoning and development--planned residential development--is provided by the legislatures of Indiana, Vermont, and Pennsylvania. Modification of the zoning regulations is permitted to facilitate construction of large developments, which may contain a mixture of housing types--one-family residences, two-family houses, and apartments. Presumably, the areas for one-family houses may be designed as cluster developments.

The Indiana statute authorizes certain municipalities and boards of county commissioners to empower their respective planning commissions, whenever a plat is submitted for approval, either to confirm the existing zoning of the land or to make reasonable changes. Landowners may submit a proposed zoning plan with their application for plat approval. Proposed zoning may vary from existing zoning of the land platted, but average density of population or building coverage may not be greater than before. Appropriate use of adjoining land must be reasonably safeguarded. When adopted, after public notice and hearing, the proposed zoning plan becomes part of the county zoning regulations and replaces the previous zoning within the platted area (Ind. 1c).

The Vermont statute, which applies to towns, cities, and incorporated villages, provides in part:

> "In specified areas and as provided in the plan, the modification of zoning regulations by the planning commission may be permitted simultaneously with the approval of a subdivision plat, subject to the conditions set forth below. The purposes of such authorization shall be to enable and

encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economical provision of streets and utilities, and to preserve the natural and scenic qualities of the open lands of this state. The conditions referred to above are as follows:

"(A) The submission of a site plan to the planning commission showing the location, height and spacing of buildings, open spaces and their landscaping, streets, driveways and off-street parking spaces and all other physical features, accompanied by a statement setting forth the nature of all proposed modifications, changes or supplementations of existing zoning regulations;

"(B) The permitted number of dwelling units shall in no case exceed the number which could be permitted in the planning commission's judgment, if the land were subdivided into lots in conformance with the zoning regulations for the districts in which such land is situated;

"(C) The dwelling units permitted may, at the discretion of the planning commission, be of varied types including one-family, two-family or multifamily construction;

"(D) If the application of this procedure results in lands available for park, recreation, open space or other municipal purposes, the planning commission as a condition of its approval may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes;

"(E) Any modification of the zoning regulations approved under this section shall be specifically set forth in terms of standards and criteria for the design, bulk and spacing of buildings and the sizes of lots and open spaces which shall be required, and these shall be noted or appended to the plat." (Vt. 2t).

The Pennsylvania law authorizes municipalities, counties, and townships to enact, amend, and repeal ordinances setting forth standards, conditions, and regulations pertaining to planned residential developments. This law also establishes the procedures for applying for, hearing on, and tentative and final approval of such developments. In every ordinance the standards, conditions, and regulations will be used to evaluate proposed planned residential development and are to be consistent with the following provisions:

1. The ordinance is to set forth permitted uses. These may include and must be limited to (1) dwelling units in detached, semidetached, or multistoried structures, or any combinations thereof; and (2) those

nonresidential uses deemed to be appropriate. The ordinance may include regulations governing the timing of development among the various types of dwellings and the nonresidential uses.

2. The ordinance is to establish standards governing the intensity of land use. The degree of land use may vary within the development depending on (1) the amount, location, and proposed use of common open space, (2) the location and physical characteristics of the site, and (3) the location, design, type, and use of structures proposed.

3. For development that is to take place over a period of years, and to encourage flexibility of housing density, design, and type, the ordinance may permit a variation in intensity of land use in the sections to be developed. Also, the ordinance may require that approval of greater density in some sections be offset by lower densities in others or by reservation of common open space through the grant of an easement or covenant in favor of the local government.

4. The standards may require that resulting open space be set aside for use of residents of the development. These standards may also include provisions which determine the acreage and location of the common open space and secure its improvement and maintenance. The ordinance may require that a landowner's organization be formed to own and maintain the common open space, but under certain circumstances, title and responsibility for maintenance may be with the local government.

5. The ordinance may require a minimum number of dwelling units in a planned residential development.

6. Standards applicable to planned residential development which relate to location, width, course, and surfacing of streets, walkways, curbs, gutters, street lights, shade trees, sewage and drainage facilities, easements for rights-of-way for drainage and utilities, reservations of public grounds and other public improvements may be different than, or modifications of, the standards and requirements otherwise required of subdivisions.

7. The ordinance is to set forth standards and criteria with sufficient certainty for evaluating the design, bulk, and location of buildings (Pa. 1c, 1t).

To assure amendments and enforcement that will preserve its integrity, the development plan is to include the following:

1. Provisions are needed that relate to the use, bulk, and location of buildings and structures; the quantity and location of common open space must be specified; and the density of residential units is to be enforceable by the local government.

2. All provisions of the development plan must be enforceable by the residents individually, jointly, or through an association.

3. Provisions enforceable by the local government may be modified or released by it, except public utility easements, after public notice and hearing. Such modification or release is not to affect enforcement rights of residents.

4. Residents, in turn, may modify or release their right to enforce provisions of the development plan but such action must not affect the local government's right to enforce.

Each ordinance is also to set forth procedures for approval or disapproval of the residential development plan. These procedures, which include filing an application for tentative approval, payment of a reasonable fee, and continuing administration must be consistent with the following provisions:

1. All planning, zoning, and subdivision matters relating to the planned residential development, including modification of regulations, must be determined by the governing body or its designated agency.

2. In the application for tentative approval, only information that is reasonably necessary for the governing body or its designated agency is required. Such information is to include: (1) location, size, and topography of the site and the landowner's interest in the land proposed for development; (2) density of land use to be allocated to parts of the site to be developed; (3) location and size of the common open space and form of organization proposed to own and maintain the common open space; (4) use and approximate height, bulk, and location of buildings and other structures; (5) feasibility of proposals for disposition of sanitary waste and storm water; (6) substance of covenants, grants of easements, or other restrictions proposed to be imposed on use of land, buildings, and structures--including proposed easements or grants for public utilities; (7) provisions for parking of vehicles and location and width of proposed streets and public ways; (8) required modifications in the municipal land use regulations otherwise applicable to the subject property; and (9) for development plans extending over time, a schedule showing the proposed times for filing applications for final approval of all sections. This schedule must be updated annually, until the development is completed and accepted.

3. The application for tentative approval must include a written statement by the landowner, setting forth reasons why a planned residential development would be in the public interest and would be consistent with the comprehensive plan for community development.

4. The application for and tentative and final approval of a development plan for a planned residential development prescribed in this article will replace all other procedures or approvals.

The statute requires public notice and hearing before the governing body on the application for tentative approval. Testimony is to be given under oath and a verbatim record of the hearing is required. Within 30 days after the hearing, a decision is called for approving or denying tentative approval or approving the conditions. Refusal to accept the conditions is deemed a denial.

The grant or denial of tentative approval is to include not only the conclusions but also the reasons for them, particularly in what respects the development plan would or would not be in the public interest. Such findings and conclusions must include but are not limited to the following:

1. Those respects in which the development plan is or is not consistent with the comprehensive plan for community development.

2. The extent to which the development plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk, and use; and the reasons why such departures are or are not deemed to be in the public interest.

3. The purpose, location, and amount of common open space in the planned residential development, the reliability of proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of residential development.

4. The physical design of the development plan and the manner in which this design does or does not adequately provide for public services, give adequate control over vehicular traffic, and further the amenities of light and air, recreation, and visual enjoyment.

5. The relationship, beneficial or adverse, of the proposed planned residential development to the neighborhood in which the development would be established.

6. For a development plan which proposes development over time, the sufficiency of the terms and conditions in the plan that are intended to protect the interests of the public and the residents of the planned residential development.

An application for final approval may be made for all land included in the development, or if development is programed by sections over time, for these sections. The application is to contain any drawings, specifications, covenants, easements, performance bond, and other requirements that may be specified by ordinance. Also to be included are any conditions set forth in the official written communications at the time of tentative approval. A public hearing on the application for final approval is not required, if the plan or partial plan submitted complies with the plan given tentative approval and with any attached conditions. However, if the plan submitted varies from the plan given tentative approval, the governing body may refuse to give final approval. In that event, the landowner may either refile for final approval without the objectionable variations or file a request for a public hearing on his application for final approval. Within 30 days after the hearing, the governing body must either grant or deny final approval. Depending on whether part or all of the planned residential development is completed within a reasonable amount of time, no modification of the provisions that are finally approved can be made without consent of the landowner.

Any decision of the governing body granting or denying tentative or final approval is subject to appeal to court (Pa. 1c, 1t).

Agricultural Districts

About 50 rural zoning enabling statutes adopted by 21 States contain express provisions authorizing establishment of agricultural zoning districts. This figure represents about one-seventh of the 350 statutes examined. Authority to establish zones "for other purposes," conferred in many of the remaining 300 statutes, probably includes power to create farm zoning districts. Most of the zoning enabling statutes are silent as to members and types (exclusive or cumulative) of such districts that may be created. These matters are generally left for local decision. But the power to establish agricultural zoning districts does not necessarily confer authority to regulate agricultural activities. In fact, agriculture is usually totally exempt from zoning regulations in many States. 83/

Enabling laws in four States specify exclusive-type farm zoning districts. In Hawaii, contiguous land areas suitable for one or another of four major uses are to be grouped in agricultural, conservation, rural, or urban districts, as the case may be (Hawaii 5m). And in Florida, any county board may zone to agriculture, for tax purposes only, land areas that were actually used for a bona fide agricultural purpose. The assessor in assessing lands that are both zoned and used for agriculture is to consider agricultural values only. The county board must remove the land from agricultural zoning whenever it is used for nonfarm purposes (Fla. 1c). Another Florida act with specific application to Martin County contains essentially similar provisions (Fla. 37c). Also, a zoning enabling act, applicable to Richmond County, Ga., authorizes the county board to establish zoning districts "exclusively for agriculture and forestry and uses incidental thereto." In these zones, there are to be no regulations other than the limitation to agricultural and forest uses (Ga. 25c).

Oregon counties may designate suitable areas of land as farm use zones. Land within these must be used exclusively for farm use except for schools, churches, golf courses, parks and playgrounds, and utility facilities. Farm use means use of land for raising, harvesting, and selling crops; feeding, breeding, management, and sale of livestock or livestock produce; dairying; any other agricultural or horticultural use; or any combination of these. Also included is preparation of the products for human use and dispersion through marketing and other means. Farm zones are to be established only when consistent with overall county development. Land within a farm use zone which is used exclusively for farm purposes is exempt from other zoning regulations (Oreg. 1c).

A few provisions that concern agriculture are found in other State enabling laws. Under provisions of a Hawaiian statute, a State agency is empowered to control the time when grazing is permitted in certain subzones. Also, the agency may specifically prohibit unlimited cutting of forest growth, soil mining or other activities detrimental to good conservation practices (Hawaii 4m). A

83/ See section "Exemption of Agriculture" in chapter VI.

zoning ordinance passed by the Florida legislature declares it unlawful to keep livestock and poultry in a designated residential subdivision (Fla. 24m). Similarly, a fire district in Connecticut is expressly empowered to regulate or prevent pigpens within the district (Conn. 43m).

Other Open Country Districts

Zoning powers were originally conferred and exercised primarily to serve urban objectives. The past decade has witnessed a rapidly expanding use of zoning in the interest of conservation. Specific authority to establish open country zoning districts other than agricultural ones is conferred by enabling statutes in more than a score of States. Among the purposes mentioned most often for which zoning districts may be established are recreation, forestry, soil or water conservation or both, grazing, and flood control.

More than 50 enabling statutes in 20 States list recreation among the permitted objectives of zoning. 84/ Closely related is authority to foster forestry, which is included among the zoning objectives suggested by enabling statutes in a number of States. 85/ Express authority to zone for unusual objectives was desirable, if not essential, in the formative period of forest-recreational zoning in Wisconsin and Minnesota in the 1930's. Today, zoning to further forestry and recreation takes place in many States that by implication authorize open country zoning districts through use of the phrase "or other purposes." Indeed, the different types of open country districts created under authority of this phrase seem to be limited only by the needs and desires of the locality in question. In New Jersey, for example, where the enabling legislation refers only to "trade, industry, residence or other purposes," a wide variety of special districts have been established by local governments (N.J. 1t). These include agricultural, beach front, flood plain, forest recreation, "open," park conservation, resort, rural, conservation, and other zones.

Express authority to use zoning measures to further conservation ends is appearing increasingly in zoning enabling statutes. Zoning objectives listed in one or more statutes include water conservation or a similar phrase, 86/ soil conservation, 87/ and conservation, or resource conservation (Fla. 48c; Ga. 13c, 23c; Hawaii 5m). In several acts, the term "water supply" appears instead of "water conservation" (for example, Ga. 1c, 13c, 21c). Among other permissible objectives of zoning are those in statutes on flood control, 88/ sanitation (Ga. 1c, 13c; S. Dak. 1c), surface water drainage and removal (Minn. 2c), and fisheries (R.I. 6t).

84/ Colo. 1c; Mich. 1c, 2t; Ohio 1c, 2t; Okla. 1c; Utah 1c; Wis. 1c are examples.

85/ Ga. 7c-9c; Mich. 1c, 2t; Minn. 1c; Mo. 1c-3c; S.C. 1c; S. Dak. 1c; Tenn. 1c, 2c; Wis. 1c are examples.

86/ Del. 1c; Mich. 1c, 2t; Minn. 1c, 2c; S.C. 1c; S. Dak. 1c; Tenn. 1c are examples.

87/ Del. 1c; Mich. 1c, 2t; Minn. 2c; S.C. 1c; Tenn. 1c are examples.

88/ Ga. 7c, 11c, 13c, 21c; Mass. 1t; R.I. 1t; S.C. 1c.

Historic and Other Districts

A growing number of rural zoning enabling statutes include provisions that permit the exercise of zoning measures to regulate and restrict areas for public activities 89/ or civic and public activities (Okla. 1c, 2c). One statute authorizes civic districts (Calif. 1c); another, park districts (Mo. 2c).

Historic zoning districts are authorized in Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Mexico, Rhode Island, Tennessee, and a few other States. 90/ Any town in Rhode Island, for example, is empowered to establish, change, and define districts which are deemed to be of historic or architectural value. Purposes of historic zoning are to safeguard the heritage by preserving areas which reflect cultural, social, economic, political, and architectural history; stabilize and improve property values; foster civic beauty; strengthen the local economy; and promote the education, pleasure, and welfare of the people. A historic district commission may be created to review applications for permits to build, alter, repair, move, demolish, or add to buildings or structures. The commission passes only on exterior features. In reviewing plans, consideration is given to historic and architectural value of the structure and its relationship to the surrounding area; to the general compatibility of exterior design, arrangement, texture, and materials to be used; and to other factors, including esthetic value (R.I. 3t).

Other States besides those mentioned have authorized historic zoning in selected cities, usually under special enabling laws. Historic zoning ordinances are in effect in Alexandria, Va.; Annapolis, Md.; Charleston, S.C.; Georgetown, D.C.; Natchez, Miss.; New Orleans, La.; Williamsburg, Va.; Winston-Salem, N.C.; and other places.

It has been urged that historic zoning even of individual buildings is not spot zoning when carried on under a comprehensive plan and related to the general welfare. Moreover, historic zoning controls architectural features only; it does not regulate the use made of buildings or land in the district.

CHAPTER VII.--ENACTING AND AMENDING AGENCIES AND PROCEDURES

Who is empowered to adopt and amend zoning ordinances? What public agencie are endowed with these powers? For answers, one must look to the zoning enablin statutes of the particular jurisdiction.

ADOPTING ZONING ORDINANCES

The great majority of rural zoning enabling laws place responsibility for final adoption of zoning ordinances and regulations on the established legislative or governing body of the local units of government. Depending on the

89/ Colo. 1c; Del. 1c; Ga. 1c, 13c, 16c, 18c; Minn. 3t, 4t; S.C. 1c; Tenn. 3m; Utah 1c.

90/ Conn. 8t, 22t; Maine 2t; Md. 12c; Mass. 2t; N.H. 7t; N. Mex. 2c; R.I. 3t; Tenn. 1c.

political unit involved, 91/ this body may be the county board (Ala. 1c; Ariz. 1c; Calif. 1c; Colo. 1c); the town or township board; 92/ the city council (Nebr. 4m-6m; N.C. 12m-33m, 35m-46m); or the directors of fire districts (Conn. 43m-47m; 49m; N.H. 5m), sanitary districts (N.C. 10m), or public service districts (S.C. 7m-8m). But there are many exceptions to this general practice. In Vermont, for example, the town board of selectmen, after adopting a zoning ordinance, must submit it to voters in rural towns for approval (Vt. 2t).

Town Meetings

The enacting agencies under provisions of several town zoning enabling laws in Connecticut, Massachusetts, Minnesota, and Vermont are the citizens assembled in town meetings. 93/ A town zoning resolution may be adopted in Minnesota by approval of 50 percent of the electors voting at the town meeting. The resolution becomes operative within 10 days unless written objections are filed by 50 percent or more of the owners of real estate in the area zoned. Thereafter, the zoning resolution may not be amended unless two-thirds of such owners consent in writing (Minn. 5t).

Planning-Zoning Commissions

An increasing number of enabling statutes grant zoning powers to planning commissions (Hawaii 1c; S.C. 3c), zoning commissions, 94/ combined planning-zoning commissions (Conn. 35t; N.C. 2c; Oreg. 2c), or area planning commissions (Ind. 2c, 3c). One Connecticut law grants zoning powers to the zoning commission of towns having 5,000 or more people (Conn. 1t). Under provisions of another Connecticut act, zoning powers may be conferred on the planning-zoning board by the town council (Conn. 34t). An unusual South Carolina act confers zoning powers on county planning commissions appointed by a majority of the legislative delegation, including the senator (S.C. 3c).

In Indiana, zoning ordinances adopted by metropolitan or area planning commissions and presented to the county council take effect unless they are acted on by the council within 31 days, under provisions of one statute; and within 60 days, under another statute; or unless they are petitioned to referendum election (Ind. 2c, 3c).

One statute in Hawaii provides alternative ways for adopting and amending the zoning ordinances:

91/ Va. Laws 1964, ch. 446 require, in any pending zoning case, full public disclosure by any member of the governing body of his ownership, if any, of the land to be zoned. Owning means ownership, directly or indirectly, by this member or a member of his immediate household through partnership or as a stockholder in a corporation owning the land.

92/ Mich. 2t; Minn. 4t; N.J. 1t; R.I. 1t-10t; Vt. 2t.

93/ Conn. 28t; Mass. 1t; Minn. 5t; Vt. 2t (rural towns).

94/ Conn. 42t; N.C. 4c, 5c; N. Mex. 1c (special zoning districts).

1. The planning commission on its own initiative, after notice and hearing, may adopt the zoning resolution. The resolution becomes operative unless it is disapproved or modified within 30 days by concurrent vote of five of seven members of the city-county board of supervisors.

2. Or the board of supervisors, by majority vote, may adopt a zoning ordinance, subject to later approval by the planning commission. If not approved within 30 days, or if not approved, the ordinance becomes effective when it is adopted by affirmative vote of at least five members of the board of supervisors (Hawaii 1c).

A North Carolina act provides that zoning regulations passed by the zoning commission are to go into effect, except in cases of appeal to the county board or the court (N.C. 5c). Another act vests zoning powers in the zoning commissio and provides that the county board will serve as the board of adjustment (N.C. 4c). And in Kansas, one statute empowers zoning boards, consisting of two ex officio members--the county engineer and the township trustee--and five township residents, appointed by the county commissioners, to enact zoning ordinance But the ordinances are not effective until they are approved by the county commissioners (Kans. 1c).

Prior Approval to Zone

Some statutes require county and town boards to obtain prior approval of voters before proceeding to zone. Under a Minnesota law, zoning by a town board must be approved by a majority (or 70 percent or more) of the legal voters voting at an annual or special town meeting (Minn. 4t). Town councils in Rhode Island may proceed to zone upon the approval of the town's financial meeting (R.I. 1t). Planning and zoning by county boards in Montana may be initiated upon petition of 60 percent of the freeholders who will be affected (Mont. 1c). A Missouri law requires that the question of whether the county court will adopt planning and zoning be decided by majority vote at a special election (Mo. 3t).

A condition precedent to zoning by any county or township in Michigan is a 10-day published notice of intent to proceed or a petition requesting such action signed by 8 percent or more of certain registered voters in the county or township, who reside in unincorporated areas of the respective jurisdictions (Mich. 1c, 2t).

Zoning Elections

Other enabling statutes provide for approval or rejection of proposed zoning ordinances by electors after adoption by county or town boards. Both county and township zoning enabling laws in Michigan permit submission of zoning ordinances to the electors. Zoning elections in a township may be initiated by a petition signed by not less than 15 percent of the persons residing in the areas affected. In a county, the petition must be signed by not less than 15 percent of the electors voting in the preceding election of a governor. Also, the petitioners must own property assessed for taxes in unincorporated portions

of the township or county, as the case may be. The petition must be filed within 30 days after passage of the ordinance (Mich. 1c, 2t). In Ohio, neither county nor township zoning ordinances go into effect until they are approved by majority vote of the electors voting at a zoning election (Ohio 1c, 2t).

Under an enabling act in Oregon, if a written protest is filed by 25 percent of the resident property holders, the zoning plan must be submitted to the qualified electors in the area affected for their approval (Oreg. 2c). But, in Arizona, any county board of supervisors is empowered to adopt zoning ordinances. However, 10 percent of the qualified electors may by petition request an election to determine whether zoning should be initiated by local option within the county or any part of it. If the vote favors local option, later elections may be called to permit owners of real property in proposed zoning areas to approve or reject the suggested regulations (Ariz. 1c).

City-County Approval

A few zoning enabling statutes require approval of zoning regulations for certain unincorporated areas by either the municipal council or the county board, or by both. An Oklahoma statute provides for cooperative city-county planning in selected counties. The statute authorizes the city to zone areas extending 5 miles beyond its boundaries and the county to zone the rest of the unincorporated territory (Okla. 1c). A Tennessee law requires zoning regulations for the urban fringe extending 5 miles beyond city limits to be approved by joint action of the quarterly county court and the municipal council (Tenn. 4c). A second Tennessee law empowers certain cities to zone the urban fringe, provided 6 months' notice of intent is filed with the county judge or chairman of the county board. If the same areas are later zoned by the county, the initial zoning regulations are automatically superseded and repealed (Tenn. 3m).

In Missouri, if proposed county zoning regulations for areas within 1-1/2 miles of city limits are protested by the city council, adoption requires a record vote by the county court, plus a statement spread upon the minutes of the reasons for the zoning regulations (Mo. 1c). 95/ The Kentucky statute empowers an independent city planning unit to exercise extraterritorial jurisdiction for subdivision purposes and, with the consent of the fiscal court, to make other regulations--for a distance of 5 miles beyond city boundaries (Ky. 1c).

State Agencies

A handful of laws are either zoning ordinances that were directly enacted by State legislatures or zoning enabling statutes that authorize State agencies to adopt zoning ordinances. The legislatures in Florida, North Carolina, and South Dakota have enacted local zoning ordinances, both interim and in final form. Hawaii, Iowa, Louisiana, Mississippi, Oklahoma, and Rhode Island have

95/ See Ill. Laws 1965, pp. 2195-2198, which requires a favorable vote by three-fourths of all members of the county board to enact proposed zoning within 1-1/2 miles of boundaries of a municipality protesting the zoning.

empowered certain State agencies to zone specified areas. Kansas and Michigan have granted designated State agencies the authority to veto local zoning regulations. 96/

AMENDING THE ZONING ORDINANCE

The zoning enabling statutes, as discussed, authorize a variety of legislative bodies, assemblies, and agencies to enact the initial zoning ordinance, including approving both zoning district boundaries and related zoning regulations. These diverse legislative groups include county boards, town or township boards, city councils, fire and sanitary district boards, citizens assembled at town meetings, electors at zoning elections, planning or zoning commissions, and selected State agencies. Generally, the statutes authorize the same legislative groups to amend the zoning ordinance. The statutes usually prescribe the same procedural steps for amending an ordinance as for its initial adoption, including report and recommendations of the planning or zoning commission, official notice, and public hearing. A Kansas statute requires 3 weeks' published notice of a proposed zoning change and in addition, written notice given by mail to all landowners within 1,000 feet of the area proposed to be changed. Approval requires unanimous favorable vote of county commissioners (Kans. 1c). Similarly, Virginia requires published notice of a proposed rezoning involving 25 or fewer parcels and also written notice to owners, agents, or occupants and to owners of abutting property and property immediately across the street or road (Va. 1c). Under provisions of a few other enabling laws, a larger percentage of favorable votes is needed to adopt an amendment than the initial ordinance. Statutes in Illinois and Massachusetts, for example, require a favorable vote by two-thirds of the legislative body for the adoption of zoning amendments (Ill. 2c; Mass. 1t).

If Neighbors Protest

Some other ways in which amending and initial enacting arrangements differ should be noted. Many zoning enabling statutes contain special provisions which apply when there is written protest concerning a proposed amendment. The protest provisions are often patterned after a section of the standard act which provides in part as follows:

> "In case, however, of a protest against such changes, signed by the owners of 20 percent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending--feet therefrom, or of those directly opposite thereto extending--feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality."

96/ For a fuller discussion of zoning at State levels, see section "Zoning by the State" in chapter II.

More than 2 dozen zoning enabling statutes in a score of States, not counting the numerous enabling statutes in Connecticut, Florida, Georgia, and North Carolina, contain written-protest provisions. The percentage of protest required is 20 percent, as suggested in the standard act, except for a few laws. In Vermont, 40-percent protest is necessary (Vt. 2t). The various areas to which the required percentage of protest by owners applies usually include the area directly affected by the proposed amendment and, most often, the adjacent areas extending various distances on the sides, directly opposite or to the rear of the area petitioned for amendment. Many acts specify only some of these areas.

Maximum distances that these protest areas may extend from the area proposed for amendment range from 100 feet to 1,000 feet, depending on the statute; distances include 150 feet, 160 feet, 200 feet, 300 feet, and 500 feet, among others. 97/ Protest areas designated by a Connecticut statute include either the area of proposed change or lots within 500 feet in all directions of this area (Conn. 1t). Under provisions of statutes in Missouri and Oklahoma, protest areas include the frontage within 1,000 feet to the right or left of the frontage proposed to be changed (Mo. 1c, 2c, 3c; Okla. 1c).

Under an Arizona statute, a person who wants a change in zoning-district boundaries must file a petition that includes the written consent of at least 51 percent of the "owners by number and area of all other properties any part of which is within 300 feet of the proposed change." But "if the petition is for a change of classification, there shall not be counted, in either number or area, the owners of land of the same classification as sought by the petitioner" (Ariz. 1c).

One Hawaiian statute requires applicants for zoning changes to deposit $100 to cover cost of notice and hearings. Also, the statute declares that no application shall be considered unless joined in by 75 percent of the owners and lessees (holding under unexpired lease terms exceeding 5 years), who are located within 750 feet of the premises of the applicant (Hawaii 1c).

For a change to be initiated in zoning district boundaries, a Minnesota statute requires petition in writing by at least 50 percent of the owners affected (Minn. 4t). A second Minnesota law requires the written consent of two-thirds of the owners affected by a zoning change (Minn. 5t). Finally, two Georgia acts 98/ empower certain county governing bodies to change zoning district boundaries or regulations only with the written consent of 51 percent of the property owners affected (Ga. 19c, 29c).

97/ Statutes and distances specified in statutes are 100 feet--Nebr. 4m, N.H. 1t, N.J. 1t, N. Mex. 1c, N.Y. 1t, N.C. (most local acts); 150 feet--Fla. (many local acts); 160 feet--Miss. 1c; 175 feet--Md. 1c; 200 feet--Tex. 1c, Vt. 2t; 300 feet--Idaho 1c, Wis. 1c; 500 feet--Conn. 1t, many other Conn. acts, Iowa 1c; and 1,000 feet--Kans. 3c, Mo. 1c-3c, Okla. 1c.

98/ Special zoning enabling acts in Georgia remain in force until the county board votes to operate under the general act.

The favorable vote usually needed to adopt a zoning amendment in event of a protest filed by the necessary percentage of property owners ranges from a majority of the members of the legislative body to unanimous approval. 99/

If City or Planning Board Objects

Several statutes provide for a larger percentage of favorable votes to adopt zoning changes protested by the council of a city located within 1-1/2 miles (or 3 miles under one statute) of the area proposed for amendment. The vote required varies by statute and includes the favorable vote of all members of the legislative body (Mo. 1c-3c; Okla. 1c); the favorable vote of three-fourths of all members to adopt proposed zoning within 1-1/2 miles of a municipality, if the proposed zoning does not include proposals made by the municipality (Ill. 1c); or the record vote of all members and a statement of the reasons for such action spread upon the records (Kans. 2c).

Any zoning changes within the State zoning area in Topeka, Kans., may be vetoed by the State executive council, but disapproval must occur within 60 days or the changes are considered approved (Kans. 4m). Similarly, a Wisconsin law makes amendments to town zoning ordinances subject to approval of county boards in counties having a zoning ordinance (Wis. 3t).

Most zoning enabling statutes require proposed zoning amendments to be submitted to a planning or zoning commission for its report and recommendations. Recommendations are usually advisory only. However, a few statutes provide for a larger favorable vote to adopt an amendment disapproved by the commission. The favorable vote required varies and includes a majority of all members of the legislative body (Colo. 1c; Tenn. 3m; Utah 1c); two-thirds of all members (N.J. 1t); five-sevenths of the membership (Ind. 2c); and unanimous affirmative vote of the board (Ind. 1c; Kans. 3c).

One North Carolina statute that authorizes extraterritorial zoning requires submission of proposed zoning amendments to a city-county planning commission. Failure of the commission to report within 30 days is deemed an approval. A recommendation based on a two-thirds recorded vote of the entire commission can be overruled only by a recorded vote concurred in by two-thirds or more of the entire membership of the governing body (N.C. 16m). But, in Kentucky, a proposed zoning amendment disapproved by the planning commission may be adopted by a majority of the entire membership of the county fiscal court (Ky. 1c).

99/ Statutes and percentages of favorable vote required are as follows: three-fifths (R.I. 1t); three-fifths of all (Iowa 1c; Fla., many acts); two-thirds (Mass. 1t); two-thirds of all (Conn., most acts; Miss. 1c; N.J. 1t; N. Mex. 1c); five-sevenths of all (Nebr. 4m); three-fourths (Wis. 1c, present and voting); three-fourths of all (N.C., most acts; Ill. 1c; Tex. 1c); and unanimous approval of all (Ariz. 1c; Kans. 1c-3c; Mo. 1c-3c; Okla. 1c). Some of these required percentages of favorable votes constitute a mere majority.

Other Requirements

Amending a town zoning ordinance in Massachusetts requires a favorable vote by two-thirds of the legal voters in a town meeting (Mass. 1t). Likewise, to repeal a town zoning ordinance in effect for 3 years or more in Vermont towns requires approval of two-thirds of the legal voters in town meetings (Vt. 2t).

An Oregon statute allows the annexation of contiguous territory to an established zoning district by declaration of the county court, after written petition of owners affected, public hearing, and either affirmative vote of the majority of voters in the area to be annexed or written consent of all owners of the area (Oreg. 2c). County boards in Nebraska may add contiguous areas of 10 acres or more to industrial park zoning districts upon petition and public notice and hearing (Nebr. 3c).

A Hawaiian statute empowers and directs a State land use commission to establish boundaries and regulations for agricultural, rural, urban, and conservation districts, but certain zoning powers, including changing subzone classifications and regulations, are exercised by the department of land and natural resources within conservation districts and by the respective counties within urban, rural, and agricultural districts (Hawaii 5m).

A local option zoning enabling statute in North Carolina has some unusual requirements. A copy of zoning ordinances and amendments thereto, signed by the chairman and attested to by the secretary of the area planning and zoning commission (the local legislative body), must be filed with the county registrar of deeds. The registrar of deeds is required to index such zoning ordinances and amendments in the name of the planning and zoning area to which each applies (N.C. 2c).

Two zoning laws passed by the legislatures of North Carolina and Florida, respectively, are essentially interim zoning ordinances. Both laws provide for later amendment by the governing bodies of the local jurisdictions (N.C. 11m; Fla. 34m).

An unusual South Carolina law confers both planning and legislative powers on a county planning board. Hearings on petitions for zoning changes are to be held by the board four times annually--on the last Monday in February, May, August, and November (S.C. 4c). In Connecticut, successive petitions for the same zoning changes relating to the same area or portions of it may each not be heard more than once in a 12-month period (Conn. 1t). A proposed zoning amendment that has been once disapproved in Massachusetts may not be reconsidered on its merits by the town meeting within 2 years, unless recommended in the final report of the planning board or, in place of it, the board of selectmen (Mass. 1t). In a variation of these time requirements, zoning applications would be barred for 18 months after the first denial and would require waiting periods of 2 years thereafter in one county and 3 years in another (Md. 7c). 100/

100/ Md. Laws 1965, ch. 898, sec. (4), 59-105.

At least once each year, county zoning commissions in Michigan must prepare and file with their county boards a report on operation of the zoning ordinance, including recommendations for amendments (Mich. 1c). Township boards also must file similar reports at least once each year (Mich. 2t). In Hawaii, the State land use commission is directed to comprehensively review zoning district classification and regulations at the end of each 5-year period (Hawaii 5m).

CHAPTER VIII.--THE SAFETY VALVES OF ZONING

Variances and special exceptions in zoning laws have been called the safety valves of zoning. Both types of measures may be employed by the board of adjustments or appeals, if authorized by the ordinance, to vary certain provisions of the ordinance in specific cases. A variance, if authorized in the zoning ordinance, may be granted where literal enforcement of the regulations would result in unnecessary hardship. 101/ A special exception within the meaning of a zoning ordinance is a dispensation permissible where the board of zoning appeals finds facts which are specified by the ordinance as being sufficient to warrant a deviation from the general rule. 102/

A third zoning device, special uses, which is closely akin to special exceptions and variances, has increasingly been used in recent years to vary the rigidities of zoning regulations. Special uses include public and semi-public, industrial, and many other types. Because of their comparative incompatibility in a given district, these uses are permitted by some zoning ordinances only upon issuance of a special-use permit. The board of adjustments usually issues such permits after public notice and hearing with a finding that the use will not be detrimental to the neighborhood, will be desirable or necessary at the proposed location for the public convenience, or both.

The special use device appears to be going through a phase of semantic confusion. Essentially the same device is referred to in the ordinances by a variety of terms including special uses, special exceptions, special permits, use variances, conditional uses, and exceptions.

One traditional way of attaining zoning flexibility is by amending the zoning ordinance or map, or both. Other ways are through exceptions, variances and special uses. Zoning's promise of protection can be readily eroded away by the improper use of any one of these four techniques.

101/ Application of Devereux Foundation, Inc., 351 Pa. 478, 41 A2d 744, 746 (1945).

102/ Application of Devereux Foundation, Inc., 351 Pa. 478, 41 A2d 744, 746 (1945); Heath v. Mayor and City Council of Baltimore, 187 Md. 296, 49 A2d 799, 803 (1946).

STANDARD ZONING ENABLING ACT

The Standard Zoning Enabling Act authorizes the local legislative body to provide for appointment of a board of adjustment comprised of five members, each serving for 3 years. Such a board if authorized may "in appropriate cases and subject to appropriate conditions and safeguards make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained."

The board of adjustment is to have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this act or of any ensuing zoning ordinance.

2. To hear and decide those special exceptions to the terms of the ordinance on which the board is required to pass under the ordinance.

3. To authorize upon appeal in specific cases a variance from the terms of the ordinance that will not be contrary to the public interest. The variance may be allowed if, because of special conditions, literally enforcing provisions of the ordinance would result in unnecessary hardship; thus, the spirit of the ordinance will be observed and substantial justice done.

   In exercising the above-mentioned powers, the board may, in conformity with the provisions of this act, wholly or partly reverse or affirm or modify the order, requirement, decision, or determination from which the appeal was brought. The board may also make any necessary order, requirement, decision, or determination that ought to be made, and to that end has all powers of the administrative officer from whose directive the appeal is taken (14, pp. 10-11).

Appeals to the board may be made within a reasonable time by any person aggrieved or by any officer, department, board, or bureau affected by any decision of the administrative officer. A reasonable time must be fixed for the hearing for which notice to the public and to the parties in interest is required. The board must decide within a reasonable time.

Minutes of all proceedings, including the voting record of each board member, are public records. The concurring vote of four members of the board is necessary to reverse any decision of an administrative official, or to decide in favor of the applicant, or to effect a variance. Within 30 days after filing of the board's decisions, appeals may be presented to a court.

Nearly half the enabling statutes examined confer authority to establish procedures for hearing and deciding appeals alleging errors and for granting special exceptions and variances, or some of these. More often, these powers are granted by enabling statutes having general rather than only local application.

Board of Adjustment or Appeals

About 80 of all State rural zoning enabling statutes having general application, plus another 80 of the numerous special local laws in Connecticut, Florida, Georgia, and North Carolina, contain provisions authorizing establishment of boards of adjustment or designating another agency to serve in the same capacity. In a dozen States, the agency is called the board of zoning appeals. 103/ In Rhode Island, it is named the board of review (R.I. 1t, 4t, 6t-8t); and in Pennsylvania, the agency is referred to as the zoning hearing board (Pa. 1c, 1t).

There are a variety of other arrangements. Statutes in a few States authorize the county board to serve as a board of adjustment. 104/ An Illinois statute provides that the zoning ordinance may authorize the board of appeals to issue variances, or the county board may grant them by ordinance or resolution but only after a hearing before the board of appeals (Ill. 1c).

Some statutes in Florida empower the Governor to appoint certain county boards of adjustment. 105/ The county legislative delegation, under provisions of a local act in South Carolina, is authorized to appoint the board of adjustment. Any municipality within the area may designate that board as its official board of adjustment (S.C. 3c). Another South Carolina statute permits county boards of adjustment to serve municipalities also (S.C. 1c). A Kentucky statute authorizes appointment of a three-, five-, or seven-member board of adjustment for each planning unit, or appointment of additional boards for a city or area within the unit. The mayor of the city and the county judge are to be the appointing officers, subject to approval of their respective legislative bodies (Ky. 1c).

In Wisconsin, the county zoning enabling statute provides for not more than five members on boards of adjustment appointed by county boards of counties having a population of less than 500,000. In counties containing 500,000 or more people, the board of adjustment is to consist of three members elected by the county board, plus at least one member from each town within the county zoning ordinance (Wis. 1c).

103/ Conn., Ga., Ill., Ind., Kans., Maine, Md., Mass., Mich., N.Y., Ohio, Tenn., Va.

104/ Minn. 1c; Mo. 1c (three members of county board); N. Mex. 1c; N.C. 4c, 34t; N. Dak. 1c; Wyo. 2c.

105/ Fla. 9c, 23c, 28c, 34m. (Governor may remove members and appoint successors).

Some of the enabling laws in North Carolina that authorize extraterritorial zoning provide for boards of adjustment comprised of both city- and county-appointed members. 106/

A municipality and a county in Georgia may each create a board of appeals or they may establish a joint board (Ga. 1c). In the same vein, each county in Pennsylvania and Tennessee may provide for a zoning hearing board or board of zoning appeals, or two or more counties may provide for a common board (Pa. 1c, 2t; Tenn. 1c). An Indiana statute, which authorizes establishment of metropolitan planning commissions, also authorizes a board of zoning appeals consisting of four five-member divisions to serve first- and second-class cities, small towns, and rural areas, respectively (Ind. 2c).

County zoning ordinances in California may provide for a board of adjustment or lodge functions of such a board with the office of zoning administrator (Calif. 1c). Functions may be assigned to the planning commission under provisions of a Georgia law (Ga. 3c). Appeals from decisions of historic district commissions in Rhode Island are made to the zoning board (R.I. 3t, 9t). Other Rhode Island zoning enabling laws authorize boards of review (R.I. 1t, 4t), lodge the duties of such boards with the town council (R.I. 7t), or authorize the town council to act in the absence of a board of review (R.I. 6t, 8t). Boards of directors of one sanitary district in North Carolina and of a public service district in South Carolina may serve as boards of adjustment (N.C. 10m; S.C. 8m).

A Hawaiian law empowers the department of land and natural resources to allow temporary use variances, if they are found to be in accordance with good conservation practices in forest and water reserve zones, now called conservation zones (Hawaii 4m). A second law authorizes the county planning commission and the zoning board of appeals of the city and county of Honolulu to permit certain unusual and reasonable uses within agricultural and rural districts other than those expressly allowed. The State land use commission or other interested agencies must be notified of the hearings on petitions for such uses (Hawaii 5m).

Concurring Vote Required

The standard act requires concurrence of four-fifths of the membership of the board of adjustment to reverse an administrative decision, decide in favor of an applicant, or permit a variation of ordinance terms. Many of the rural zoning enabling statutes have similar requirements. 107/ Other ratios of favorable vote required by the statutes are a majority (Ga. 8c, 9c; Mich. 1c, 2t; S.C. 1c); two-thirds (Vt. 1t); and three-fifths, 108/ which may be only a majority depending on the size of the board of adjustment. 109/

106/ N.C. 12m, 14m-16m, 25m, 26m, 33m.

107/ Colo. 1c; Conn. 1t; Nebr. 4m; N.C. 1c, 3c, 6c, 8c; S.C. 4c; Tex. 1c.

108/ Fla. 23c; Iowa 1c; N.H. 1t; R.I. 4t (four-fifths concurrence required for some official actions).

109/ In Indiana, under provisions of one act, any member of the metropolitan board of zoning appeals who misses three consecutive regular meetings is deemed to have resigned (Ind. Acts 1965, ch. 434).

A few statutes specify concurring vote ratios of six-eighths (N.C. 33m, 42m); and others, a unanimous concurrence by all members (Nev. 1c). Colorado statutes require unanimous concurrence of three-member boards and concurrence of four members of five-member boards (Colo. 1c). In North Carolina, a quorum of five members of 10-member boards of adjustment is provided in two local statutes that authorize extraterritorial zoning. Official action requires concurrence of four-fifths of the board members present at the hearing (N.C. 15m, 16m). Similarly, in South Carolina, certain counties may appoint boards of adjustment of three or five members, of which a majority is a quorum. A majority vote of members hearing an appeal may decide on it (S.C. 1c).

Official action under provisions of a Wisconsin statute requires the concurring majority vote of members of the board of adjustment (Wis. 1c). In Rhode Island, the concurring vote of three members of five-member boards of review is required to reverse any decision of an administrative officer; and the concurring vote of four members is required to decide in favor of the applicant for an exception or variance (R.I. 1t). A variance adopted by a board of appeals in Illinois may be adopted by majority vote of the county board. If the proposed variance is disapproved by the board of appeals, adoption requires the favorable vote of three-fourths of all members of the county board (Ill. 1c).

APPEALS ALLEGING ERRORS

If an aggrieved person believes that the zoning official has made an error or has wrongly interpreted some provision of the ordinance, he may ask the board of adjustment to review the official's ruling (1, p. 8). Most of the zoning enabling statutes that provide for boards of adjustment authorize these boards to hear appeals alleging errors. Although provisions of the statutes conferring this power differ, the great majority are closely patterned after provisions of the standard act discussed earlier.

In Arizona, the board of adjustment may "interpret the zoning ordinance when the meaning of any word, phrase or section is in doubt, when there is dispute between the appellant and enforcing officer, or when the location of a district boundary is in doubt" (Ariz. 1c). A Utah law authorizes the board of adjustment to decide appeals that allege error in administrative decisions and to interpret the zoning maps (Utah 1c). An Illinois statute includes a clause allowing a standard appeal for alleged error. In addition, the statute directs the board of appeals to hear and decide all matters referred to it and all matters which it is required to pass on under terms of the zoning ordinance or zoning enabling statute (Ill. 1c). Similar provisions are found in two Michigan statutes (Mich. 1c, 2t).

Any person aggrieved by a decision of the board of adjustments may petition the courts for relief.

VARIANCES

"The zoning ordinance . . . has two aims that are more or less antagonistic. It must be inflexible enough to afford continuing protection to property, and it must be adaptable enough to avoid unnecessary hardship or interference with growth and natural change . . . . The ability of the ordinance to protect is inherent; the ability to adapt to changed or unusual conditions, both foreseen and unforeseen, is written into it in the provisions for variance and exception (1, p. 6).

"A variance is a modification of the literal provisions of a zoning ordinance granted when strict enforcement of the zoning ordinance would cause undue hardship owing to circumstances unique to the individual property on which the variance is granted" (1, p. 10).

The three necessary requisites of variances are (1) undue hardship, (2) unique circumstances, and (3) peculiarity of the property (1). Variances may be grouped into two classes--dimensional and use--as follows:

1. Dimensional variances relate (a) to the building size, allowing modification of height, bulk, and size; and (b) to the building tract (area), allowing modification of site area, setback, side and rear yards, and lot sizes.

2. Use variances are concerned with the use made of property.

Findings Required to Justify Use of a Variance

In Indiana, a county zoning enabling statute directs a board of zoning appeals to authorize height, bulk, area, and use variances only if the board determines and makes each of the following findings:

"1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community.

"2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

"3. The need for the variance arises from some condition peculiar to the property involved and such condition is not due to the general conditions of the neighborhoods.

"4. The strict application of the terms of the ordinance will constitute an unusual and unnecessary hardship if applied to the property for which a variance is sought.

"5. The grant of the variance does not interfere substantially with the metropolitan comprehensive plan adopted pursuant to sections . . . of this act" (Ind. 2c).

A second Indiana statute directs a board of appeals to authorize only height, bulk, and area variances, after the board makes findings similar to those listed above. But the board is not to grant a variance from a use district or classification (Ind. 3c).

In more general language, an enabling statute in Georgia empowers a board of appeals:

> "To authorize upon appeal in specific cases such variance from the terms of the ordinance or resolution as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the ordinance or resolution will, in an individual case, result in unnecessary hardship, so that the spirit of the ordinance or resolution shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of appeals that:
>
> "(a) there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography, and
>
> "(b) the application of the ordinance or resolution to this particular piece of property would create an unnecessary hardship, and
>
> "(c) such conditions are peculiar to the particular piece of property involved, and
>
> "(d) relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the ordinance or resolution: Provided, however, that no variance may be granted for a use of land or building or structure that is prohibited by the ordinance or resolution" (Ga. 1c).

Both of the Indiana statutes discussed earlier specify the types of variances that may be granted. One statute allows and the other prohibits use variances. The Georgia statute, on the other hand, authorizes variances in general terms but prohibits use variances.

It has been suggested that the following conditions must be found before a variance is justified:

1. The ordinance must cause the hardship.
2. The applicant must show that he is precluded from making any reasonable use of his property.
3. The hardship caused must be peculiar to the particular property and not common to the neighborhood.
4. The applicant must show that the hardship was not self-inflicted.

5. Granting the variance will not change the character of the zoning district. 110/

Other Statutory Provisions

Approximately 120 of the rural zoning enabling statutes examined in 40 States contain provisions authorizing the granting of variances. A dozen of these statutes in nine States expressly authorize use variances, 111/ while statutes in four States expressly prohibit them. 112/ The latter group includes the recent Kentucky statute which prohibited use variances but expressly authorized dimensional variances (Ky. 1c). Use variances are permitted also under less definite provisions of many of the remaining enabling statutes.

A board of adjustment in New Jersey may not grant use variances but, in special cases, may recommend their issuance to the governing body, which may "allow a structure or use in a district restricted against such structure or use" (N.J. 1t). In Illinois, the zoning ordinance can authorize the board of appeals, in cases where there are practical difficulties or particular hardship, to vary regulations relating to the use, construction, or alteration of buildings and structures or the use of land. Or the ordinance can authorize the county board to issue variances. The favorable vote of three-fourths of all members of the county board is required to reverse a decision of the board of appeals (Ill. 1c). Provisions in several North Carolina statutes require the concurring vote of four members of five-member boards of adjustment to grant variances (N.C. 1c, 3c, 6c, 8c).

In Minnesota and North Dakota, the statutes also empower the county board to adjust the application or enforcement of any zoning provision when a literal enforcement would result in great practical difficulties, unnecessary hardship, or injustice (Minn. 1c, N. Dak. 1c).

The Massachusetts statute authorizes boards of appeals to impose limitations both of time and use when granting variances. A continuation of the use permitted may depend on compliance with regulations to be made and amended from time to time thereafter (Mass. 1t). In conservation zones in Hawaii, the department of land and natural resources may allow temporary variances from zoned use where good cause is shown and where the proposed use is determined by the board to be in accordance with good conservation practices (Hawaii 4m).

A board of adjustment in Washington may subject any variance granted to conditions that will assure that the variance does not constitute a special privilege inconsistent with the zoning restrictions on other property in the zone or vicinity (Wash. 2c). Attaching conditions to a variance will not justify it if hardship has not already been shown (1, p. 44).

110/ Recent Decisions, 56 Mich. Law Rev. 820-23 (1958); see also, Kans. 1c.

111/ Ga. 25c; Hawaii 4m; Ill. 1c; Ind. 2c; Mass. 1t; Nebr. 4m; N.J. 1t; N.C. 1c, 3c, 6c, 8c, 12m; N. Dak. 1c.

112/ Ga. 1c; Ind. 3c; Ky. 1c; N.J. 1t.

For each petition and request for a public hearing, the board of adjustment is to collect a fee of $25, under provisions of one Oklahoma statute (Okla. 1c), and under terms of a second statute, an amount fixed by the county board (Okla. 2c).

SPECIAL EXCEPTIONS

"An exception is a use permitted only after review of an application therefor by a person or board other than the administrative official, such review being necessary because the provisions of the ordinance covering conditions, precedent or subsequent, are not precise enough to allow application without interpretation, and such review is required by the ordinance" (1, p. 13).

"An exception does not require 'undue hardship' in order to be allowable . . . . This does not mean that undue hardship may not exist, but only that proof of undue hardship is not necessary." Nor need the circumstances be unique to the property involved. Finally, an exception usually does not require a deviation from the strict letter of the zoning ordinance (1, p. 14).

A ready way has been suggested for differentiating between a variance and a special exception. If the facts and conditions are set forth in the ordinance, the modification is called an exception; if the modification is necessary because of hardship that would come from literal interpretation of the ordinance, then it is called a variance (1, pp. 1-2).

Authorizing special exceptions, especially those that concern use requirements, permits a measure of flexibility and refinement in applying zoning regulations. For example, the ordinance may, without reservation, allow churches, parks, schools, utility substations, and other similar uses in residential districts. Or it may permit such uses as special exceptions for which special permits are required and issued only on approval of location, size of tract, and other factors.

Special exceptions that relate to height and area requirements may be authorized also. For example, a Connecticut statute authorizes an ordinance to provide that "certain classes or kinds of buildings, structures or use of land are permitted only after obtaining a special permit or special exception from . . . the zoning board of appeals" or other agency designated ". . . subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values" (Conn. 1t)

More than 100 rural zoning enabling statutes in 30 States, including most of the many enabling statutes in Connecticut and Florida, expressly authorize the granting of special exceptions. 113/ Less specific language in other statutes may authorize granting them also.

113/ Ala. 1c; Calif. 1c; Colo. 1c; Conn. (most acts); Del. 1c; Fla. (most acts); Ga. 1c, 13c, 16c; Ind. 1c-3c; Iowa 1c; Kans. 3c; Ky. 1c; Maine 1t; Md. 1c, 7c; Mass. 1t; Mich. 1c, 2t; Nev. 1c; N.H. 1t; N.J. 1t; N. Mex. 1c; N.C. 1c, 3c, 8c; Pa. 1c; R.I. 1t, 4t-9t; S.C. 4c; Tenn. 1c, 3m; Tex. 1c; Utah 1c; Va. 1c; Wis. 1c, 2t; Wyo. 2c.

SPECIAL USES

The third zoning device frequently used to lessen the rigidities of zoning regulations is here called special uses but, as mentioned earlier, is identified by a variety of terms in the statutes. Special uses include certain land uses that cannot be conveniently allocated to one zone or another or that may cause effects not always foreseeable. Special uses are distinguished by one or more of the following characteristics:

1. Large land areas required.

2. Infrequent.

3. Sometimes create an unusual amount of traffic.

4. Sometimes obnoxious or hazardous.

5. Required for public safety and convenience (1, pp. 14-15).

Special use permits that relate to use of property may be grouped into two broad classes, based on the scope of the power granted the board of adjustment. The board may be empowered to allow as special uses in specified types of zoning districts certain uses that are usually restricted to other types of zones; for example, commercial uses in residential districts. Or, in certain types of zones, the board could allow selected special uses of the same general classes of uses to which these districts are usually restricted. Examples are provisions (1) permitting noxious uses in industrial districts as special uses or exceptions only or (2) requiring special use permits before establishing garbage feeding farms and certain other livestock operations in agricultural zones.

A Missouri law authorizes boards of adjustment, each consisting of three members of a county court, to issue special permits allowing for buildings, structures, or land uses, which cannot be placed in a specified district or districts because they pose undue regulatory difficulties. Such permits, issued as permissive uses and not as rezoning, are to include those regulations, restrictions, and limitations, plus a termination date, that are required for the exercise of reasonable control over the uses (Mo. 2c).

A California statute authorizes boards of adjustment or the offices of zoning administrators, in appropriate cases and with suitable conditions and safeguards, to pass on "applications for special exceptions, conditional uses or other permits when the zoning ordinance provides therefore and establishes criteria for determining such matters . . ." (Calif. 1c). A similar provision in a Washington statute empowers boards of adjustment to hear and decide applications for conditional uses and other permits, when the ordinance indicates specific uses to be subject to conditional use permits and provides criteria for determining the condiitons to be imposed (Wash. 2c). Boards of zoning appeals in Ohio may grant conditional zoning certificates for the use of land, building, or other structures, if such certificates for specific uses are provided for in the zoning ordinance (Ohio 1c, 2t). A recent Kentucky act authorizes boards of adjustment to approve, modify, or deny a conditional use

permit. The board may revoke such permits or variances if conditions are not complied with and may compel violators to remove offending structures or uses. Annual review of these permits is required (Ky. 1c).

Special exceptions to the zoning regulations are also allowed by North Carolina statutes in the types of situations and in accordance with the principles, conditions, safeguards, and procedures specified in the ordinance (N.C. 1c, 3c, 8c).

In some States, facilities of public utilities are exempt from local zoning regulations. Zoning enabling statutes in other States include express provisions requiring special permits before these facilities can be given a location. This type of statute in Nebraska empowers boards of appeals to grant special permits to the State or any of its subdivisions and to public utilities for public service purposes, although the application may conflict with provisions of the ordinance. Permits may be granted with such conditions as are deemed necessary (Nebr. 4m). Several statutes in Florida, Georgia, and South Carolina authorize boards of adjustment in appropriate cases to permit buildings or premises to be erected or used for public utility purposes in any location when reasonably necessary for public convenience and welfare (Fla. 39c; Ga. 17c, 23c; S.C. 8m).

VARIANCES AS AID IN PRESERVING OFFICIAL MAPS

A few zoning enabling statutes empower boards of adjustment, in certain cases, to grant landowners permission to erect buildings in setback areas or beds of proposed roads and streets. Statutes in Missouri empower county courts, upon recommendation of the planning commission, to establish building or setback lines along planned major highways and to prohibit any new building within such lines. Also, the court may provide for a board of adjustment or an existing board may serve. The board of adjustment is authorized to modify or vary the setback regulations, in specific cases, to avoid an unwarranted hardship which constitutes an unreasonable deprivation of use, as distinguished from the mere grant of a privilege (Mo. 1c, 2c).

In New Hampshire, a municipality which has established and recorded an official map may preserve the map's integrity by prohibiting the issuance of permits for any building or structure in the bed or on any land located between the mapped lines of any street. However, the local board of zoning adjustment is authorized to grant exceptions if it finds one of two situations:

1. The property involved will not yield a reasonable return to the owner unless the permit is granted; or

2. The permit is necessary for justice and equity. By preserving the integrity of the official map and avoiding excessive cost for the rights-of-way, the interest of the municipality is served instead of that of the landowner.

The board, when issuing the permit, may specify exact location, area to be occupied, height and duration of the building, and other reasonable details and conditions. 114/

Wisconsin also authorizes cities to establish official maps showing streets, highways, parkways, parks, and playgrounds. To preserve the integrity of such maps, cities may prohibit the granting of permits, except as provided, for any building in the beds of proposed streets, highways, or parkways. Extensions for certain distances beyond city limits are included. But if land within a mapped roadway is not yielding its owner a fair return, the board of appeals may grant a building permit, subject to reasonable requirements as a condition. Any person who builds in the bed of a proposed highway without a permit is not entitled to compensation for damages to the building when the roadway is constructed later. The board is to refuse a permit when the applicant will not be substantially damaged if he places his building outside the mapped street, highway, or parkway. 115/

A Kentucky statute empowers both cities and counties to protect the integrity of official maps by prohibiting the issuance of permits for construction or material alteration of any building within right-of-way lines or boundaries of streets, watercourses, parks and playgrounds, public schools, or other public building sites shown on the official map. Unless an application for a building permit is requested and granted, damages cannot be recovered if any structure or improvement made within said lines or boundaries is later taken for public use. Any unauthorized betterment is to be removed at the owner's expense when the land is acquired for public use. But such permits may be granted by the board of adjustment, if the land is not yielding a fair return. In granting a permit which will as little as practicable increase the cost of future acquisition, the board may impose reasonable requirements as a condition. A permit will not be granted when the applicant will not be substantially damaged if he places his building outside the boundary lines (Ky. 1c).

In 1957, Georgia incorporated some unusual innovations in a new law on official maps. Certain cities, towns, and counties were empowered to adopt an official map or maps showing existing and proposed streets, roads, highways, and thoroughfares, including the boundary lines of proposed rights-of-way. After an official plan has been adopted and recorded, the governing body may prohibit the granting of permits for erecting, enlarging, or locating any building within the proposed rights-of-way.

Any owner who is denied a permit may appeal to the board of adjustment. It may grant relief if the official recorded map is found to: (1) interfere or threaten to interfere with free sale of the property at full market value, or (2) deprive the owner of an intended otherwise lawful use. Upon such findings, the board may grant one or more of the following types of relief:

1. Tax relief, if the land is idle. When accepted by the owner, he and his successor in title are stopped for a period of 5 years from asserting any claim for damages based on the official plan.

114/ N.H. Rev. Stat. Ann. §§ 36:30, 36:31 (1955).
115/ Wis. Stat. Ann. §§ 62:23(6), (a) and (d) (1957).

2. Permit construction.

3. Right of free sale, if sought by the owner.

If the third type of relief is granted, the board may order the governing authority of the city, town, or county to, within 100 days or less, (1) institute condemnation proceedings or make a bona fide offer to purchase, or (2) permit the sale.

Property acquired for future rights-of-way by condemnation or purchase is made a legal investment of municipal, county, and State pension funds in Georgia. Each property investment of pension funds must be approved by the trustees of the funds involved. Further, the municipality or county involved must guarantee repayment of the principal plus interest at 3 percent, compounded annually. Official map ordinances and regulations are enforced by the regular local zoning officials (Ga. 2c).

If a condemning authority in Connecticut acquires part of a tract only, leaving a remainder which does not conform to the lot or area requirements of the zoning regulations, the authority must either obtain a zoning variance for the remaining portion or acquire that portion too. 116/

CHAPTER IX.--NONCONFORMING USES AND PROPERTIES

Real property may be nonconforming in several ways. The use being made of land or buildings or structures may be nonconforming because such use does not agree with current zoning regulations in the districts where the land or buildings or structures are located. Buildings or structures may be nonconforming because of their height, size, lot coverage, location on the lot, or other features. Lots or tracts may be nonconforming because they fail to meet size, width, or other yard requirements.

Nonconformities are often multiplied by a rush to build and to establish a use before pending zoning ordinances become effective. The resulting nonconforming uses promise future aggravating land use conflicts. Creation of such disrupting uses can often be avoided by the adoption of interim or temporary zoning ordinances that are applied immediately but are effective for a limited time only. Enabling laws in a number of States authorize such ordinances. 117/

The Standard State Zoning Enabling Act does not include a section on nonconforming uses or properties. In fact, the term "nonconformities" is not found in the act. Nor is it found in more than two-thirds of the numerous special zoning enabling acts in Connecticut, Florida, Georgia, and North Carolina, nor in over half the general acts in effect in the remaining States. However, omission from these acts of all reference to nonconformities does not necessarily mean that zoning ordinances established under these acts will not include provisions protecting nonconforming uses or properties.

116/ Conn. Gen. Stats. vol. 8, § 48-24 (1958) and (Supp. 1965).

117/ Calif. 1c; Colo. 1c; Fla. 34m; Ind. 2c; Minn. 2c; Oreg. 1c; Utah 1c; Wash. 2c; Vt. 1t. Also see section "Interim Ordinances" in chapter VI.

Express provisions pertaining to nonconformities are found in a second group of rural zoning enabling statutes consisting of most of the remaining one-third of the numerous statutes in Connecticut, Florida, Georgia, and North Carolina, and almost half the general statutes in effect in the other States.

NONCONFORMING USES

Most provisions dealing with nonconformities in rural zoning enabling statutes concern nonconforming uses only. Many of these provisions include authority to pass regulations either for protecting or limiting the duration of nonconforming uses of buildings and structures.

A nonconforming use is a use of land, buildings, or structures that existed legally when the zoning ordinance or amendment to it was adopted. However, after zoning, this use no longer agrees with the regulations of the use district in which the nonconforming use is located.

Generally, statutes that acknowledge nonconformities include protective provisions. Although the wording of these provisions varies from statute to statute, the essence is expressed by the following sentence from the Delaware statute:

> The lawful use of a building or structure or the lawful use of any land, as existing and lawful at the time of the enactment of a zoning regulation, or in the case of a change of regulation, then at the time of such changes may, except as hereinafter provided, be continued, although such use does not conform with the provisions of such regulation or change 118/

The protection afforded under the majority of these statutes applies expressly to nonconforming use of land, buildings, and structures (see Va. 1c, Ga. 17c; Kans. 1c). Other statutes specify use of land and buildings; 119/ land and structures (Fla. 52c); land, buildings, and premises (Ala. 1c; Hawaii 4m; Ohio 1c, 2t); or buildings and premises (Ga. 16c; Hawaii 3c; Wis. 1c, 2t). A few statutes employing collective terms sanction continuance of the nonconforming use of premises or property (Ill. 1c; Kans. 3c, Tex. 1c). Protection of nonconforming uses under provisions of another group of statutes is applied to specified classes of property described by a variety of terms used singly or in various combinations, including buildings; 120/ structures or noncomplying

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118/ Del. 1c. See also Ala. 1c; Ark. 1c; Colo. 1c; Conn. 1t, and 24 special acts; Fla. 19c; Ga. 1c, and 14 special acts; Hawaii 3c, 4m, 5m; Ill. 1c; Kans. 1c, 2c; Ky. 1c; Maine 1t; Mass. 1t; Mich. 1c, 2t; Minn. 1c, 2c, 4t; Nebr. 4m; N.H. 1t, 5m, 6m; N.J. 1t; N.C. 6c, 7c, 9c, 35m; N. Dak. 1c; Ohio 1c, 2t; Okla. 1c, 3m, 4m; Oreg. 2c; R.I. 1t, 4t-10t; S.C. 1c, 5c; S. Dak. 1c; Tex. 1c; Utah 1c; Vt. 1t; Va. 1c; Wis. 1c, 2t; Wyo. 1c.

119/ Ark. 1c; Ga. 11c, 17c; Hawaii 5m; S.C. 5c.

120/ Ga. 15c, 19c, 24c; Minn. 4t; Nebr. 4m.

structure (N.H. 1t, 5m, 6m; Vt. 1t); existing uses (N.C. 2c, 6c, 9c; Okla. 2c); existing buildings and uses (N.C. 7c); buildings, structures, and uses (Fla. 19c; N.J. 1t; Okla. 1c); land and premises (N. Dak. 1c); and uses and occupancies (Minn. 1c). Most of these varied phrases appear to have a broad meaning. A few seem to grant only a limited power.

Some unusual provisions are found in a dozen statutes. Leasing out rooms in dwellings in residential zones, for example, is prohibited by a special Florida act. Rooms under lease when the act took effect may continue to be leased out but the nonconformance ends with change of ownership or main occupant of the dwelling (Fla. 24m). In Rhode Island, the nonconforming use of any "building or improvement" is safeguarded (R.I. 1t, 4t-10t).

A recent South Carolina statute, which authorizes the establishment of special industrial areas, prohibits regulations adversely affecting any existing business located therein (S.C. 6c). But a Nebraska statute directs the county board to enter an order finding an industrial area no longer existent, if the area has not been used or ceases to be used for industry for 5 years (Nebr. 3c).

An interesting Georgia act empowers certain counties to adopt official maps showing both existing and proposed roads and streets, including proposed lines of rights-of-way. Existing nonconforming uses within such lines may be continued, pending public purchase. New or additional uses within the lines are also permitted, provided the uses do not involve improvements that would increase acquisition costs (Ga. 2c). A New Jersey law empowers town boards to establish building setback lines and to fix the time after which no structure, building, or part thereof can remain between the building line and street. However, before this termination date, the board may regulate and restrict, with conditions, the repair, reconstruction, or rebuilding of any existing building or structure, including the erection of temporary structures, between the building line and street (N.J. 2t).

NONCONFORMING BUILDINGS AND LOTS

A handful of statutes contain provisions that are expressly concerned with nonconforming buildings or structures or with nonconforming building lots or tracts. For example, a Maine statute provides that "a zoning ordinance does not apply to structures and uses existing at the time it is enacted, but applies to new structures and uses, and changes in structures and uses made afterwards" (Maine 1t). Similarly, New Hampshire and Vermont statutes declare that a zoning regulation is not to apply to existing structures but to any alteration for a substantially different use (N.H. 1t, 5m, 6m; Vt. 2t). Comparable provisions are found in the Massachusetts enabling law which specifies that zoning regulations are to apply to any alteration of a building or structure when this alteration amounts to reconstruction, extension, or structural change (Mass. 1t). Nonconforming use in Oregon is expressly defined to include the initiation, maintenance, or continuation of any use, construction, activity, improvement, building, or structure not in conformity with the zoning regulations (Oreg. 2c).

Zoning enabling statutes in Hawaii, Massachusetts, and New York include provisions pertaining to nonconforming building lots or tracts. Any lot in Massachusetts that complied with area and frontage requirements when it was laid out and the deed recorded may be built on for residential uses even if later zoning amendments impose larger area and frontage requirements. However, the following conditions must be met:

1. The lot area exceeds 5,000 square feet and the frontage is 50 feet or more.

2. The lot is in a residential zone and complies with other zoning regulations.

3. The front, side, and rear yard setbacks met the minimum requirements existing at the time of recording.

4. All other building requirements are met.

5. The lot was held in ownership separate from that of adjoining land when minimum building tract requirements were increased. If the lot was in common ownership with adjoining land when such requirements were increased, this lot may be built on up to 5 years from the recording date, providing requirements 1 through 4 are met.

A 1960 amendment declared that the above provisions are not to be construed as preventing building on a nonconforming lot, if such building is not prohibited by the local zoning ordinance (Mass. 1t).

In Hawaii, parcels of land of 10 acres or less located in conservation zones are considered nonconforming, if taxed in 1957 and held and intended for residential or farming use (Hawaii 4m).

The New York zoning enabling law also provides for amortizing nonconforming building lots. Residential lots may have complied with area and dimension requirements when the subdivision plat was approved and filed. However, dimension requirements may have become nonconforming because of a zoning ordinance or amendment that increased side, rear, or front yard setback requirements. If such nonconformity occurred, the residential lots involved are exempt from the new yard regulations during the following time periods after the subdivision plat is filed:

1. For 3 years, if at the time of filing the town had both a zoning ordinance and a planning board empowered to approve subdivision plats.

2. For 2 years, if at the time of filing the town had a zoning ordinance but no planning board empowered to approve subdivision plats.

3. For 2 years, if at the time of filing the town had no zoning ordinance but did have a planning board empowered to approve subdivision plats.

4. For 1 year, if at the time of filing the town had no zoning ordinance and no planning board empowered to approve subdivision plats (N.Y. 1t).

AMORTIZING USE

Communities adopting zoning ordinances are required to guarantee the continuance of prior existing uses. Should these nonconformities be allowed indefinitely, or should they be conformed to the zoning regulations within specified periods of time?

Rural zoning enabling laws in several States expressly authorize amortizing of nonconforming uses. Some of these laws empower local legislative bodies to designate a period or provide a formula limiting the duration of the nonconformities. 121/ A Minnesota law authorizes reasonable regulations for gradual elimination of nonconforming uses (Minn. 2c).

Typical of the first group of laws is the Colorado statute which declares that "the county commissioners in any zoning ordinance may provide for the termination of nonconforming uses, either by specifying the period in which nonconforming uses shall be required to cease, or by providing a formula whereby the compulsory termination of a nonconforming use may be so fixed as to allow for the recovery or amortization of the investment in the nonconformance." 122/ In addition, two Oklahoma statutes provide that in each instance the action may be taken by the county board only after public notice and hearing before the planning commission and after certification of the commission's recommendation to the board (Okla. 1c, 2c).

ENLARGING AND EXTENDING USE

Zoning enabling laws contain a diversity of other provisions authorizing regulation of nonconforming uses. Some of the regulations authorized could help to gradually eliminate the nonconformities. Others would serve to perpetuate them. A phrase common to a number of these laws empowers the local governing body to provide the terms and conditions in the zoning regulations under which the restoration, reconstruction, extension, or substitution of nonconforming uses can be permitted. 123/ Statutes in Michigan and Ohio add the term "completion" (Mich. 1c, 2t; Ohio 1c, 2t). Some Georgia laws add the words "continuance" (Ga. 1c) or "construction" (Ga. 8c, 9c). Three North Carolina statutes include the words "extension, restoration, or alteration" (N.C. 2c, 6c, 9c).

The enabling statutes containing provisions that deal primarily with enlarging or extending nonconforming uses may be placed in four groups. Statutes in the first group permit nonconforming uses to be enlarged or extended, subject

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121/ Colo. 1c; Ga. 1c, 7c-9c, 11c, 16c-18c, 21c, 23c; Okla. 1c, 2c; S.C. 1c, 4c; Utah. 1c.

122/ Colo. 1c. Essentially the same wording appears in Ga. 1c, 7c-9c, 11c, 16c-18c, 21c, 23c; S.C. 1c, 4c; Utah 1c.

123/ Colo. 1c; Del. 1c; Ga. 1c, 7c-9c, 11c, 17c, 18c, 21c, 23c; Mich. 1c, 2t; Ohio 1c, 2t; S.C. 1c, 4c; Utah 1c.

to regulations prescribed by the local legislative body. Provisions in the second group forbid use of zoning to prohibit extension or enlargement of nonconforming premises. In the third group, provisions prescribe limits on permitted enlargement or extension of nonconforming uses. The final group of laws prohibit enlargement or extension of nonconforming uses.

As examples of the first group, certain statutes in North Carolina authorize the extension, restoration, or alteration of existing nonconforming uses subject to appropriate zoning regulations (N.C. 2c, 6c, 9c). In the same vein, the Massachusetts statutes provide that zoning regulations are not to apply to nonconforming uses but will apply to their alteration or extension (Mass. 1t).

An opposite intent is expressed by the Minnesota zoning enabling law that illustrates the second group. It declares that the zoning resolution must not prohibit the alteration of or addition to any existing building or structure for the purpose of carrying on any prohibited trade or industry (Minn. 4t).

Typical of the third group is a proviso in several statutes which states that a nonconforming use may be extended throughout the same building, provided no structural alteration of the building is proposed or made for the purpose of the expansion. 124/ Of similar import are two Maryland statutes authorizing the board of appeals to permit extension of lawful nonconforming uses throughout the same lot or building (Md. 3c, 5c). A third Maryland law empowers the county council to authorize the board of appeals to permit such an extension throughout a building or lot. The latter must have existed as a single lot in a single ownership when the nonconformance was created (Md. 7c).

An Arizona statute permits expansion of nonconforming business uses, but this expansion may not exceed 100 percent of the area of the original business (Ariz. 1c). Similarly, an Idaho law permits expansion of heavy industrial sites equal in size to the present site, plus a further expansion into adjacent areas, subject to reasonable zoning regulations (Idaho 1c).

Examples of the fourth group are certain statutes in Tennessee, Oregon, and Virginia which declare that a nonconforming use, building, or structure must not be extended or structurally altered unless made to conform (Tenn. 13c; Oreg. 2c; Va. 1c). Wyoming and Wisconsin statutes provide that alteration of or addition to nonconforming buildings or structures may be prohibited if the purpose is to effect a change in use (Wyo. 1c) or to carry on any prohibited trade or new industry (Wis. 1c, 2t). Two other Wisconsin statutes do not permit extension of nonconforming uses (Wis. 3t, 4t). Another provides that continuance of the nonconforming use of a temporary structure may be prohibited altogether (Wis. 1c).

MAKING REPAIRS

Only a few rural zoning enabling statutes contain specific provisions for maintenance and repair of nonconforming premises. Presumably, the broad protection accorded nonconforming uses and premises implies the right of normal

124/ Colo. 1c; Del. 1c; Ga. 17c, 18c, 21c, 23c; Nebr. 4m; N.C. 7c; S.C. 1c, 4c; Tenn. 4c; Utah 1c.

maintenance and repair. However, the right to repair is expressly safeguarded by statutes in Illinois, Kansas, and Missouri. In substance, zoning regulations are not to be exercised so as to deprive any owner (lessee or tenant) of a nonconforming property of its use or maintenance for the purpose to which it is then lawfully devoted (Ill. 1c, 2c; Kans. 3c; Mo. 1c-3c). An Arizona statute permits reasonable repair or alteration of nonconforming properties (Ariz. 1c). Repair of such properties under certain conditions is also sanctioned by a New Jersey law (N.J. 2t). But, in Wisconsin, zoning regulations may prohibit the alteration of, addition to, or repair (in excess of 50 percent of the assessed value) of buildings or structures in nonconforming uses (Wis. 1c), unless the buildings or structures are permanently changed to a conforming use (Wis. 3t, 4t).

No zoning regulation of a historic district in Massachusetts is to be construed to prevent ordinary maintenance or repair which does not involve a change in design, material, color, or outward appearance of any exterior architectural feature (Mass. 2t).

Some enabling statutes give special attention to repairs that involve structural alterations. For example, Oklahoma laws provide that nonconforming properties must not be extended or structurally altered unless changed to conform or changed to a higher or more restrictive use (Okla. 3m, 4m).

REBUILDING AFTER MAJOR DAMAGE

A dozen or more rural zoning enabling statutes include special provisions for rebuilding of destroyed or damaged structures in nonconforming use. A frequent approach is to empower the local legislative body to regulate the restoration or reconstruction of such structures. 125/ Kansas and Tennessee statutes prohibit zoning regulations that would prevent restoration of any building in nonconforming use that is damaged by fire, explosion, act of God, or a public enemy to an extent of not more than 50 percent of its assessed valuation (Kans. 1c, 2c) or less than 75 percent of its reasonable value (Tenn. 4c). In a Maryland law, the county council can empower the board of appeals to permit restoration of any lawful nonconforming property which has been damaged to an extent of not more than 75 percent of the value of the property after it has been reconstructed (Md. 7c).

Other laws in Maryland and New Jersey authorize any structure in nonconforming use to be restored or repaired when the structure has been partially destroyed (Md. 3c, 5c; N.J. 1t). Extension, restoration, or alteration of nonconforming properties can be regulated under provisions of certain North Carolina laws (N.C. 2c, 6c). A New Jersey statute authorizes town boards to establish building lines. These boards may permit, on such terms and conditions as may be prescribed, the re-erection, reconstruction, and repair of any existing building or structure located in the setback area (N.J. 2t).

125/ Colo. 1c; Del. 1c; Ga. 1c; Mich. 1c, 2t; Ohio 1c, 2t; S.C. 1c, 4c; Utah 1c.

RESUMING DISCONTINUED USE

Some statutes authorize elimination of nonconforming uses by prohibiting their assumption after stated periods of interruption. Nonconforming uses of land, buildings, or premises may not be resumed after being discontinued for a period of 1 year or more, under provisions of certain statutes in Alabama, Minnesota, South Carolina, South Dakota, and Wisconsin; 126/ or for a period of 2 years or more under other laws in Minnesota, North Dakota, Ohio, and Virginia. 127/ Other statutes, omitting a cutoff period, merely provide that if a nonconforming use is abandoned (Nebr. 4m; Oreg. 2c) or discontinued (Tenn. 4c; Wis. 2t; Wyo. 1c), any future use of the premises must conform. In Vermont, resumption of a nonconforming use may be prohibited if such use is abandoned for any period of time or is discontinued for 6 calendar months regardless of evidence of intent to resume such use (Vt. 2t).

Certain counties in Hawaii are empowered to provide for elimination of nonconforming uses as such uses are discontinued (Hawaii 3c). Counties in Virginia may provide that nonconforming uses continue only so long as the then existing or a more restricted use continues, if buildings and structures are maintained without structural changes and unless the nonconforming use is discontinued for more than 2 years (Va. 1c).

Towns in Massachusetts may regulate nonuse of nonconforming buildings and structures so as not to unduly prolong the life of a nonconforming use. However, the towns may not regulate nonuse of nonconforming land that was in agriculture, horticulture, or floriculture if the nonuse has existed for less than 5 years (Mass. 1t). In Nebraska, after 5 years' nonuse for industry, county boards may enter an order finding a special district no longer an industrial area (Nebr. 3c).

EFFECT OF TAX FORFEITURE

Enabling laws in a few States require that future uses of nonconforming property acquired by the State or by a county conform with zoning regulations. If the State acquires title to any land or premises in Minnesota or North Dakota, all further use or occupancy must conform (Minn. 1c; N. Dak. 1c). A provision in a Colorado statute is typical of language found in such statutes as those in Delaware and Utah:

> If any county acquires title to any property by reason of tax delinquency and such properties be not redeemed as provided by law, the future use of such property shall be in conformity with the then provisions of the zoning resolution of the county, or with any amendment of such resolution, equally applicable to other like properties within the district in which the property acquired by the county is located (Colo. 1c; Del. 1c; Utah 1c).

126/ Ala. 1c; Minn. 2c; S.C. 8m; S. Dak. 1c; Wis. 3t, 4t.
127/ Minn. 1c; N. Dak. 1c; Ohio 1c, 2t; Va. 1c.

CHANGING NONCONFORMING USE

About a dozen rural zoning enabling statutes empower the local government body to provide for the substitution of nonconforming uses (Ga. 1c) on terms and conditions 128/ or reasonable terms (Mich. 1c, 2t; Ohio 1c, 2t) that are set forth in the zoning ordinance. Other statutes expressly allow a nonconforming use of a building or structure to be changed to another nonconforming use of the same or more restricted classification (Ky. 1c), if no structural alterations are made (Nebr. 4m; Tenn. 4c). In Wyoming, the county board may either regulate or prohibit alteration of or addition to nonconforming premises that would change the use (Wyo. 1c).

Statutes in Kansas, Maine, Massachusetts, and New Hampshire authorize regulation of changes in nonconforming uses (Kans. 1c; Maine 1t) for a different purpose or in a manner substantially different from the prior use (Mass. 1t; N.H. 1t). An Oregon law states that nonconforming uses must not be changed, except in conformity with the zoning regulations (Oreg. 2c). As expressed in a Nebraska statute, a general rule seems to prevail after a nonconforming use has been changed:

> Whenever a nonconforming use of a building has been changed to a more restricted use or to a conforming use such use shall not thereafter be changed to a less restricted use (Nebr. 4m).

KEEPING RECORDS OF NONCONFORMING USES

Zoning enabling statutes in Minnesota, North Dakota, and Wisconsin provide for keeping lists of nonconforming uses and occupancies (Minn. 1c; N. Dak. 1c; Wis. 1c, 2t). A few of the provisions discussed below are common to two or more of these statutes. Others pertain to statutes in one State only.

Immediately after the effective date of the zoning ordinance or an amendment, the officer or agency designated is to prepare a complete list of all existing nonconforming uses and occupancies. 129/ The list is to contain names and addresses of the owner or owners and any occupant other than the owner, the legal description of the land, and the nature and extent of the nonconforming use (Minn. 1c; N. Dak. 1c; Wis. 1c, 2t). Copies of these lists are to be filed for record in the offices of the registrar of deeds and the county auditor, and are to be corrected from time to time as the county board may prescribe (Minn. 1c; N. Dak. 1c).

Before such filing in Wisconsin, the lists must be published for 3 successive weeks. After 60 days, a period which allows time for filing sworn proof of corrections in writing, the corrected lists are to be filed with the registrar of deeds (Wis. 1c); or the town clerk, with a certified copy to the registrar of deeds (Wis. 2t). The filed record is to be prima facie evidence (presumed true unless disproved) of the extent and number of nonconforming uses

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128/ Colo. 1c; Del. 1c; S.C. 1c; Utah 1c.

129/ The officer or agency designated may be the county board (Minn. 1c; N. Dak. 1c), town board (Wis. 2t), or zoning administrator (Wis. 1c).

at the effective date of the ordinance or amendment (Wis. 1c, 2t). Provisions in the Wisconsin statutes pertaining to listing of nonconforming uses do not apply in counties which issue building or occupancy permits or have provided other procedures for enforcing the zoning ordinance (Wis. 1c, 2t).

Laws in Minnesota and North Dakota require town assessors to keep lists of nonconforming uses up to date. The statutes in this respect are nearly alike and provide in substance as follows: immediately after the filing of the list, the county auditor must furnish each town assessor or the county assessor, as the case may be, a record of nonconforming uses or occupancies existing within the assessment district. At the time of each succeeding assessment, the assessor is to prepare a list of all nonconforming uses or occupancies. The county board will amend the previous list and file a certified copy in the office of the registrar of deeds (Minn. 1c; N. Dak. 1c).

One Wisconsin statute requires town clerks to furnish town assessors with a record of nonconforming uses. Thereafter, the town assessor, after each annual assessment, is to file with the town clerk a certified report listing all nonconforming uses discontinued during the year. If once discontinued, any future use of the premises must conform (Wis. 2t). Another Wisconsin statute requires the county board to prescribe procedures for an annual listing of discontinued and newly created nonconforming uses (Wis. 1c).

A Wyoming statute declares it unnecessary to secure a certificate permitting continuance of a nonconforming use (Wyo. 1c). There is no duty, under an Indiana law, to prove the nonexistence of a nonconforming use. The burden of proving its existence is placed on the party asserting that the use exists (Ind. 2c).

CHAPTER X.--ENFORCEMENT AND REMEDIES

It matters little how carefully a zoning ordinance has been drafted if it is not enforced. Without enforcement, the ordinance will not adequately help guide community development in accordance with a comprehensive plan. A variety of local agencies and officials share responsibility for zoning enforcement. Important among these are the zoning or building inspector, or both; the board of zoning appeals or adjustments; and, of course, the local legislative body. Citizens too can have an effect. Property owners and others, depending on the zoning enabling law, may instigate legal actions against zoning violators and in some States, against officials who delay. State legislatures are also important because a local unit of government can exercise only those enforcement procedures and remedies that are authorized in the enabling act.

A diversity of provisions controlling enforcement are found in the numerous rural zoning enabling statutes. Evaluation of these provisions is aided by comparing them with enforcement provisions contained in the Standard State Zoning Enabling Act. Pertinent provisions in the standard act read as follows:

"The local legislative body may provide by ordinance for the enforcement of this act and of any ordinance or regulation made thereunder. A violation of this act or of such ordinance or regulation is hereby declared to

be a misdemeanor, and such local legislative body may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

"In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this act or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises" (14, pp. 12-13).

According to a footnote to the above section:

"The local authorities may use any or all of the following methods in trying to bring about compliance with the law: They may sue the responsible person for a penalty in a civil suit; they may arrest the offender and put him in jail; they may stop the work in the case of a new building and prevent its going on; they may prevent the occupancy of a building and keep it vacant until such time as the conditions complained of are remedied; they can evict the occupants of a building when the conditions are contrary to law and prevent its reoccupancy until conditions have been cured. All of these things the local authorities should be given power to do if zoning laws are to be effective."

PERMITS REQUIRED

Zoning enforcement through issuance of permits is not mentioned in the standard act. However, this authority apparently is implied in the general provision which empowers the local legislative body to provide for the enforcement of zoning ordinances and regulations. Nevertheless, express authority to issue a variety of permits to facilitate zoning enforcement is found in numerous rural zoning enabling statutes. Included are building, use, occupancy, and zoning permits.

About 40 zoning enabling statutes employ a collective term authorizing the issuance of permits. More than half these statutes are found in Florida and North Carolina. The remainder are in effect in about a dozen other States. 130/ It is unclear whether the statutes that confer authority to issue permits necessarily empower local governments to require any kind of zoning permit deemed suitable. Very often, statutory language apparently authorizes permits relevant to building construction only. In the North Dakota law, for example, county

130/ Georgia, Illinois, Kansas, Louisiana, Nebraska, Massachusetts, Missouri, Montana, Oklahoma, Oregon, Rhode Island, and South Carolina.

boards may "provide for issuance of permits as a prerequisite to construction, erection, reconstruction, alteration, repair or enlargement of any building or structure." 131/ In North Carolina, on the other hand, a permit is to be issued if the proposed structure meets all zoning requirements that may have been adopted (N.C. 27-33m, 37m-39m, 42m).

The term "permits," as used in several statutes, more clearly embraces both building and use permits. These statutes are typified by a Missouri law which declares that "no building or other structure shall be erected, constructed, reconstructed, enlarged, or altered, or repaired in such manner as to prolong the life of the building, nor shall the use of any land be changed without first obtaining a permit. . . ." 132/ Many Florida statutes declare it unlawful to use or occupy any land or water in the county unless a permit is obtained (see Fla. acts, app. II).

About 50 rural zoning enabling statutes in 15 States provide for zoning enforcement by means of withholding building permits. 133/ Two dozen of these statutes are in Florida and Tennessee. Twelve of the 50 authorize both building and other kinds of permits. Drafters of statutory provisions authorizing building permits often follow a pattern exemplified by a provision of the Colorado statute which reads in part: "The board of county commissioners may provide for the enforcement of the zoning regulations by means of the withholding of building permits, and for such purpose, may establish and fill a position of county building inspector. . . ." 134/

Other statutes give a variety of names to the permits used in zoning enforcement. Among these are building, use, and occupancy permits; zoning permits; and certificates of occupancy or compliance. A South Carolina law specifies repair permits (S.C. 8m).

A few miscellaneous statutory provisions relating to permits may be of special interest. Indiana statutes empower the legislative body to require procurement of an improvement location permit for erection, alteration, or repair of any structure and an occupancy permit for use of any structure or land regulated by a zoning ordinance (Ind. 2c, 3c). Under a Maryland statute, permits may be issued to certify the class of occupancy of buildings, structures, or land, except residential or agricultural land (Md. 3c). Two Rhode Island town councils are empowered to prescribe terms, conditions, and limitations under which building permits may be granted (R.I. 6t, 8t). Another Rhode Island law prohibits granting a permit before the historic district commission has passed on exterior features of the proposed improvement (R.I. 3t).

131/ N. Dak. 1c; see also, Mont. 1c; Oreg. 2c.

132/ Mo. 1c; see also, Nebr. 1c; Okla. 1c.

133/ Alabama, Arizona, Colorado, Florida, Georgia, Maryland, Massachusetts, Nevada, North Carolina, Pennsylvania, Tennessee, Utah, Virginia, Wisconsin, and Wyoming.

134/ Colo. 1c. See also, Ala. 1c; Ariz. 1c; Minn. 4t; Nev. 1c; Tenn. 1c, 4c, 9c, 10c; Utah 1c; Wis. 3t.

Special permits may be granted by the board of appeals, under provisions of a Massachusetts law and subject to appropriate conditions and safeguards (Mass. 1t). Similarly, a Missouri statute authorizes granting special permits which set out regulations, restrictions, limitations, and termination date (Mo. 2c).

A handful of statutes exempt certain improvements from permit requirements. In Oklahoma, two laws forbid county boards from requiring permits for construction of any farm home or other farm building (Okla. 1c, 2c). As discussed earlier, twoscore statutes exempt agriculture from zoning regulations. 135/

A permit is not required in Arizona if the repairs or improvements cost less than $500 (Ariz. 1c). A Florida act authorizes permits, except for construction, alteration, or repair (other than electrical or plumbing), costing $50 or less (Fla. 13c). Nor may permits be required under a Missouri law for ordinary repairs on conforming use structures (Mo. 1c). In the same vein, a Georgia law does not allow permits to be required for repair of any currently existing homes or businesses. This law also does not require a permit for construction of barns or other farm buildings used solely for agricultural purposes, if the proposed structures would be located adjacent to an existing farmhouse owned by the builder (Ga. 11c).

An unusual provision is found in a Maine statute. Failure of the building inspector to direct a written notice of his decision to the applicant for the permit within 30 days constitutes refusal (Me. 1t). Permits expire after 90 days if construction is not commenced, under provisions of a Florida act (Fla. 54c).

Many rural zoning enabling statutes that authorize issuance of permits as a means of zoning enforcement also contain specific provisions allowing fees to be charged for permits. 136/ However, several statutes in North Carolina forbid charging such fees (N.C. 21m, 22m, 32m-39m). In Illinois, although permits may be required for erection, alteration, and repair of farm buildings and structures, no fees may be charged (Ill. 1c). Many zoning enabling statutes probably include implied authority to charge fees for permits.

The Virginia statute sanctions " . . . collection of fees to cover the cost of making inspections, issuing permits, advertizing of notices and other expenses incident to the administration of a zoning ordinance . . ." (Va. 1c). A Florida law empowers the county board to fix reasonable permit and inspection fees for all proposed improvements valued over $1,000 (Fla. 4c). A Georgia law sanctions building permit fees that do not exceed 1 percent of construction, alteration, or other costs, except that a minimum fee of $10 is allowed (Ga. 17c). Graduated schedules of permissible fees are suggested by many Florida acts and one Oklahoma law. A typical Florida act allows a fee charge of not over $3.50 for the first $1,000 estimated cost of the improvement, plus $2.50 for each additional $1,000 cost up to $5,000, plus 50 cents per $1,000 added cost up to $100,000 (Fla. 28c). The Oklahoma statute allows maximum building

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135/ See section "Exemption of Agriculture" in chapter VI.

136/ Among laws that authorize permit fees are Fla. (most acts); Kans. 1c; Ill. 1c; Mich. 2t; Mont. 1c; Nev. 1c; N. Dak. 1c; Okla. 1c, 2c; Oreg. 2c; Va. 1c

permit fees of $1.50, plus one-tenth of 1 percent of the job valuations up to $100,000 and 1/25 of 1 percent for job valuations of $100,000 or more. The schedule of fees established may be higher or lower but may not exceed $300 (Okla. 2c).

If an owner fails to obtain a permit or pay the fee in certain Kansas counties, the zoning board may determine and assess the amount due, plus an equal sum as penalty, and proceed against the real property affected by filing a statement with the county clerk. The clerk is to spread the total sum as additional taxes against the owner's real property for the credit of the zoning board. However, not less than 10 days before filing with the clerk's office occurs, a written notice of the sum due and unpaid must be served on or mailed to the owner, his agent, or the occupant of the premises. If the amount due is paid within 10 days, no penalty is assessed (Kans. 1c).

CRIMINAL SANCTIONS

As stated earlier, the standard act declares a zoning violation a "misdemeanor," punishable "by fine or imprisonment or both." Such a violation is also pronounced a misdemeanor by more than 100 of the rural zoning enabling statutes; of which about half are in Florida and Georgia. 137/ Most of the 100-odd statutes specify minimum or maximum permissible fine and imprisonment or both. However, about a dozen, including eight statutes in Georgia, follow closely the pattern of the standard act and merely authorize zoning enforcement by fine or imprisonment, or both. 138/

Minimum fines specified in selected statutes include $5 (Tenn. 4c), $10, 139/ and $100 (Oreg. 2c). Many of the Connecticut statutes set the minimum fine at $10 but specify a $100 minimum if the zoning violation is willful (Conn. 1t). On the other hand, maximum fines allowed upon conviction for zoning violations include $50, 140/ $100, 141/ $200, 142/ $250, 143/ $300, 144/ $500, 145/ and $1,000 146/. (Cumulating fines occurring when violations continue were excluded). Certain Minnesota and Nebraska statutes include

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137/ Ala. 1c; Ariz. 1c; Colo. 1c; Fla. (most acts); Ga. (most acts); Kans. 1c-3c; Ill. 1c; Ind. 1c-3c; Iowa 1c; Md. 1c; Minn. 1c, 2c, 4t; Mo. 1c-3c; Nebr. 4m; N.Y. 1t; N.C. 1c, 2c; Okla. 1c; S.C. 1c, 3c; S. Dak. 1c; Tenn. (most statutes); Tex. 1c; Utah 1c.

138/ Conn. 43m; Ga. 3c, 12c, 15c, 17c-19c, 24c, 27c, 29c; Md. 1c; Okla. 1c, 2c.

139/ Conn. 1t; Ga. 10c, 14c, 28c; Ind. 1c-3c; Nebr. 4m; Va. 1c.

140/ Conn. 6t; N.Y. 1t; N.C. 1c, 2c, 7c, 9c; R.I. 2t; Tenn. 4c.

141/ Ala. 1c; Colo. 1c; Conn. 1t and other acts; Del. 1c; Fla. 13c; Ga. 4c, 10c, 14c, 28c; Iowa 1c; Minn. 4t; Nebr. 4m; Ohio 1c, 2t; R.I. 1t, 4t-9t; Wyo. 1c.

142/ Kans. 1c-3c; Ill. 1c; Conn. 22t, if violation is willful.

143/ Va. 1c; Nebr. 1c, 2c; Conn. (many statutes, if violation is willful).

144/ Ind. 1c-3c; Pa. 1c, 1t.

145/ Fla. 9c, 17c, 20c; Ga. 16c; Hawaii 4m; Ky. 1c; Oreg. 1c.

146/ Ga. 26c; Hawaii 5m; S.C. 3c.

provisions that expressly authorize adding costs to the $100 or $250 maximum fines specified (Minn. 4t; Nebr. 1c, 2c--$250). An Oregon law authorizes punishment of convicted zoning violators by a fine of not more than $100 for each day of continuing violation, the total fine not to exceed $1,000. A fine of not more than $500 is authorized when the offense is not a continuing one (Oreg. 1c). Several Connecticut statutes designate minimum fines of $100 and maximum fines of $250, if the violation is willful. 147/

Upon conviction, a zoning violator may also be punished by imprisonment. About three-fourths of the zoning enabling statutes that designate minimum or maximum fines or both also indicate alternative jail terms that may be imposed. The remaining one-fourth of these statutes authorize punishment by fines only. 148/ A third group of statutes mentioned earlier sanction punishment by fine or imprisonment or both, without mentioning permissible maximum terms.

Maximum permissible periods of imprisonment mentioned in the statutes include 10 days; 149/ 30 days; 150/ 60 days; 151/ 90 days, or 3 months; 152/ 6 months; 153/ and 12 months, or 1 year (Kans. 2c, 3c). The general zoning enabling statute in Connecticut, provisions of which are incorporated by reference into many local Connecticut acts, authorizes fines of $10 to $100 for each day's zoning violation. But if the offense is willful, fines of $100 to $250 plus 10 days' imprisonment may be imposed for each day the violation continues (Conn. 1t).

More than 50 statutes in a score of States, including the general zoning enabling law in Connecticut, provide that each and every day during which a zoning violation continues is to be deemed a separate offense. 154/ A statute in South Carolina sanctions repeated prosecutions if a violation continues (S.C. 3c). A few statutes limit the maximum fines that may be imposed for each day a zoning violation continues. Maximum fines allowed per day under provisions of the statutes identified are $50 (Vt. 2t; W. Va. 3m), $10 to $100 (Nebr. 4m), $100 but not to exceed $1,000 (Oreg. 1c), and not over $200 (Kans. 1c).

Any person served with an order to discontinue a zoning violation who fails to comply within 10 days is guilty of a misdemeanor, under provisions of a Missouri law (Mo. 3c), or in Connecticut, is subject to a civil penalty of $250 payable to the treasurer of the municipality (Conn. 1t).

147/ Conn. 1t is an example.

148/ The latter group includes Hawaii 4m, 5m; Kans. 1c, 3c; Ind. 1c-3c; Nebr. 4m; Ohio 1c, 2t; Oreg. 1c, 2c; R.I. 1t, 2t, 4t-9t; Tenn. 4c, 9c; Wyo. 1c.

149/ Ala. 1c; Colo. 1c; Del. 1c.

150/ Fla. 13c, 17c, 28c; Iowa 1c; Md. 8c; Nebr. 1c, 2c; N.C. 1c, 2c, 7c, 9c.

151/ Fla. 3c, 20c, 50c, 54c; Ga. 16c; Pa. 1c, 1t.

152/ Conn. 5t, 6t; Minn. 3t, 4t.

153/ Ill. 1c; N.Y. 1t; S.C. 3c, 7m.

154/ Conn. 1t; other States include Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Hawaii, Kansas, Kentucky, Maryland, Nebraska, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Wisconsin, and Wyoming.

EQUITABLE REMEDIES

Zoning administrators need not rely solely on criminal sanctions to enforce zoning ordinances. Usually, certain so-called equitable remedies are available also. The standard act, as explained earlier, empowers the proper local authorities to "institute any appropriate action or proceedings" in a court to prevent any unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct, or abate the violation; prevent the occupancy of any building, structure, or land; or prevent any illegal act, conduct, business, or use in or about the premises.

Nearly 150 of the rural zoning enabling statutes, including many of the numerous acts in Connecticut, Florida, Georgia, and North Carolina, contain provisions expressly authorizing zoning enforcement by proceedings in equity. In many laws, provisions granting this power are patterned after the standard act, some with slight or major variations. Several statutes confer broad powers to invoke equitable remedies for zoning enforcement.

An example of the latter is a statute in Oklahoma which authorizes the proper authorities or any person, the value of whose property is or may be affected by a violation, in addition to other remedies, to institute any appropriate court action or proceedings to prevent or remove the violations (Okla. 1c). Similarly, Maryland and Kansas laws empower such agencies or persons or both to institute any appropriate court action or proceedings to compel compliance with the zoning regulations (Md. 9m). Or they may maintain suits or actions in any court having jurisdiction to enforce the zoning regulations and to abate the nuisance maintained in violation of the regulations (Kans. 1c-3c).

In certain counties in Georgia, both the injured party and the county are empowered to resort to equity to prevent violation or further violation of zoning regulations (Ga. 4c, 10c, 14c, 28c). Under provisions of an Hawaiian law, zoning regulations may be enforced by court order at suit of the county or owners of real estate directly affected by the ordinance (Hawaii 3c). Other statutes empower the local legislative body to determine the most practical and efficient means of enforcing the zoning plan (Wash. 1c). But a South Carolina act empowers the appropriate officials to invoke any legal, equitable, or special remedy to enforce zoning regulations (S. C. 2c). Finally, some courts have held that zoning violations may be enjoined in a proper case, although injunctive relief is not expressly authorized in the statute.

Some zoning enabling statutes declare zoning violations a nuisance (Fla. 24m; Oreg. 1c) or confer the equitable right of injunction to abate the violation as a nuisance or do both. 155/ County boards in Indiana may declare zoning violations common nuisances. The owner of the premises is held liable for maintaining a common nuisance on the premises. 156/ Certain towns in Rhode Island may order any zoning violation removed or abated as a nuisance. If the owner defaults, the town may remove the violation at the owner's expense (R.I. 5t, 6t, 8t).

155/ Fla. 17c, 34m; Ga. 15c, 19c, 27c; Kans. 1c-3c; Mich. 1c, 2t; R.I. 4t; Tenn. 4c.

156/ Ind. 1c-3c; Mich. 1c, 2t.

CIVIL PENALTIES

A few zoning enabling statutes follow the general language of the standard act and broadly empower the local legislative body to provide civil penalties for zoning violations (Md. 1c). A Connecticut statute is more specific. Any person who fails to comply within 10 days after an order is served to discontinue a zoning violation is subject to a civil penalty of $250, payable to the town treasurer (Conn. 1t). Under an act in Georgia, contempt before zoning and planning boards is punishable by the judge of the superior court upon certification of such contempt (Ga. 17c).

PERSONS AUTHORIZED TO ENFORCE

The proper local authorities under provisions of the standard act are empowered to enforce zoning regulations by initiating any appropriate action. Comparable provisions in the numerous enabling statutes are generally of two types. Some empower the local governing body to designate the enforcing agency or official but sometimes limit the range of choice. Other statutes expressly place responsibility for zoning enforcement on specific agencies or officials.

Many statutes in the first group simply empower the local governing body to designate any qualified person, county employee, or other officer, as the zoning enforcing official. 157/ Other statutes in this group indicate agencies or officials or both that may be designated to issue permits and to enforce or assist in enforcing the ordinance. Among officials most often mentioned are the building inspector, 158/ the county engineer (Fla. 27c, 28c), the county attorney, 159/ and the zoning administrator (Va. 1c). Most of the North Carolina statutes that sanction extraterritorial zoning authorize a city-county enforcing official. An Indiana law empowers the planning commission, among others, to institute suit to enjoin an individual or a governmental unit from violating provisions of the enabling law or zoning ordinance. Similarly, suit may be brought for a mandatory injunction directing removal of structures erected in violation (Ind. 2c). 160/

A second group of zoning statutes expressly designate the agency of official responsibility for zoning enforcement. Among those made responsible separately or in various combinations are the county board, 161/ the county or district attorney, 162/ the attorney general (Tenn. 1c), the building inspector, 163/ the county engineer (Okla. 1c), the planning or zoning commission, 164/ and the zoning director and deputies (Fla. 13c).

157/ Ill. 2c; Mich. 1c; Minn. 1c; Mo. 1c, 2c.

158/ Colo. 1c; Ga. 1c; Nebr. 1c; Nev. 1c; Tenn. 1c.

159/ Ind. 2c; Minn. 1c; Mo. 1c, 2c.

160/ See also Ind. acts 1965, ch. 434.

161/ Ala. 1c; Ariz. 1c; Del. 1c; Iowa 1c; Minn. 1c; Nebr. 3c; S.C. 4c; Tenn. 1c; Utah 1c.

162/ Ariz. 1c; Ga. 15c, 19c, 29c; Del. 1c; Ind. 3c; Minn. 1c, 4t; Nev. 1c; Oreg. 2c; S.C. 3c, 4c; Tenn. 1c, 3m; Utah 1c.

163/ Ariz. 1c; Okla. 1c; Tenn. 1c.

164/ Fla. 13c, 24m; Ind. 2c, 3c; Oreg. 2c.

Provisions that expressly allow property owners and others to bring suits to enforce zoning regulations are included in about 50 zoning enabling statutes. Legal requirements under these statutes vary. A clause found in statutes in several States, including Arizona and Ohio, allows any adjacent or neighboring property owner who is specially damaged by the zoning violation, in addition to other remedies provided by law, to institute injunction, mandamus, abatement, or any other appropriate action or proceedings. The owner may use these to prevent, abate, or remove the unlawful erection, construction, reconstruction, alteration, maintenance, or use. 165/ Similarly, under provisions of other statutes, proceedings in equity may be instituted by any owner of property whose value or use is or may be affected by the violation (Ill. 1c; Okla. 1c; Mo. 1c, 2c); by any taxpayer within the county where the lands affected are located (Fla. 42c, 52c); by any person to be affected (Fla. 42c, 52c); by any affected citizen or property owners (N. Dak. 1c); by the owners of real estate directly affected by the regulations (Hawaii 3c, 4m); or by any adjacent or neighboring property owner (Minn. 4t). In several States, the right to initiate proceedings in equity to enforce zoning regulations is conferred on any owner or occupier (Del. 1c) of real estate within the district in which the zoning violation occurs (Colo. 1c; S.C. 1c, 4c; Utah 1c). The latter statutes would seem to bar enforcement actions by owners whose real estate was directly across the street if the street was also the district line.

Another remedy is available in Minnesota, where any taxpayer may institute mandamus proceedings to compel the proper officials to perform duties required by the zoning enabling statute or zoning ordinance. Presumably, enforcing duties would be included (Minn. 1c, 2c).

A number of statutes list the persons or parties who in proper cases may be charged with zoning violations. Statutes in Connecticut and Nebraska are examples. When a violation of any provision of the zoning regulations has been committed or exists, the owner, general agent, lessee, or tenant of a building or of any part of such building or premises may be charged. Similarly, the general agency, architect, builder, contractor, or any other person who assists or takes part in any violation or who maintains any building or premises in which any violation exists is guilty (Nebr. 4m; Conn. 1t). Government units in Indiana may be enjoined from violating zoning regulations (Ind. 2c).

OTHER SANCTIONS AND PROVISIONS

Additional means of ensuring enforcement of zoning and subdivision regulations are authorized by several Indiana statutes. No damages, for example, are to be awarded by the county in condemnation proceedings for taking of or injury to any structure erected in violation of provisions of a zoning ordinance (Ind. 1c, 3c), if the structure remains in violation at the time of taking (Ind. 2c).

In two of these statutes, the county council can require building contractors to furnish an annual bond of $1,000 both to ensure compliance with zoning or subdivision regulations and also to correct any violations without cost to the county (Ind. 2c, 3c). Further, counties may require professional engineers

165/ Ariz. 1c; Ga. 1c; Ohio 1c, 2t; Tenn. 1c, 3m, 10c, 13c.

or land surveyors to provide a bond of $1,000 to ensure that their plans and surveys conform to zoning or subdivision regulations (Ind. 2c). If a contractor violates the zoning or subdivision regulations three times in 1 calendar year, neither he nor the person for whom he proposes to build can be issued an improvement location or a building permit for 1 year after the third violation (Ind. 2c).

One county planning commission in Indiana may appoint one or more attorneys to advise and assist in zoning enforcement. Also, if practical, the commission may employ one attorney full time to enable him to become well informed on the specialized law of planning, zoning, and subdivision control. The services of this attorney are to be available without extra compensation to the county prosecutor in all cases involving the planning department. The attorney may be deputized to act for and under direction of the county prosecutor and may bring civil actions to enforce zoning regulations in the name of the commission (Ind. 3c). A second statute requires the planning commission to employ two or more attorneys full time to serve in a similar capacity at annual salaries of not less than $11,000 (Ind. 2c).

If a zoning violator in Rhode Island fails to remove the violation as ordered by a court, the town may remove it at the owner's expense and bring suit for expenses incurred (R.I. 5t, 6t, 8t, 9t). In Nevada, any sale or contract to sell made contrary to provisions of building and zoning ordinances is voidable within 1 year at the sole option of the buyer (Nev. 1c).

An unusual Pennsylvania law probably will promote compliance with zoning regulations in certain cities. The general assembly of the State found that many owners of property in first- and second-class cities were using their properties in violation of zoning, housing, building, safety, and fire regulations. Many innocent purchasers incurred grievous losses because they were not aware of violations until they had agreed to purchase or had made the purchase.

To prevent these losses, the law requires property owners in first- and second-class cities to deliver to purchasers, at or prior to settlement, a use registration permit showing legal use and zoning classification of the property. Owners are also required to advise purchasers of notices received of violations of housing, building, safety, or fire regulations pertaining to the property. Failure to comply is a misdemeanor punishable by fine of not over $1,000 or imprisonment of not more than 1 year, or both. An official certificate designating the property a nonconforming use is deemed compliance.

Another section of the law requires any owner to insert in any agreement for sale of property a provision showing the zoning classification and stating whether the present use complies. Also, the agreement must include a provision disclosing notices of uncorrected violations of housing, building, safety, or fire ordinances. If the owner fails to include the required provisions, it is presumed, in any action at law or equity brought by the purchaser against the owner, that the owner signing the agreement represented and warranted that the

property was being used in compliance with the zoning ordinance, and that there were no uncorrected violations of housing, building, safety, or fire regulations. 166/

Legal actions challenging zoning ordinances of Wisconsin counties on procedural grounds are barred unless commenced within 6 months after adoption. But such actions are not barred unless at least one notice of the zoning hearing was published in a local newspaper and unless a public hearing was held at the time and place specified (Wis. 1c).

Certain counties in Georgia may adopt official maps and zone areas located between boundary lines of existing and proposed roads. An owner of idle land between the lines is entitled to tax relief but, if granted, the owner is stopped for 5 years from asserting any claim for damages, except for the property's fair value when it was acquired for public use (Ga. 2c).

All civil or criminal actions brought by parishes, municipalities, or any person in Louisiana to enforce zoning, building, or subdivision regulations must be brought within 2 years after the beginning of the violation. When the 2-year prescription has accrued, the property involved in the violation will enjoy the same legal status as a nonconforming use, building, or tract. 167/

RECORDING THE ZONING ORDINANCE

Zoning enabling statutes in Colorado, Utah, and South Carolina require recording of zoning ordinances and maps. The Colorado statute is typical and provides:

> "Upon the adoption of any zoning ordinance or regulations, or maps, the board of county commissioners shall file a certified copy of each in the office of the county clerk and recorder, which copies shall be accessible to the public. The county clerk and recorder shall index such ordinances and regulations as nearly as possible in the same manner as he indexes instruments pertaining to the title of land." 168/

Moreover, under provisions of a South Carolina law, zoning ordinances do not become effective until recorded (S.C. 8m).

FINANCING ZONING ADMINISTRATION

About a dozen zoning enabling statutes contain provisions pertaining to appropriations or tax levies for financing zoning administration. For example, any county board in North Dakota and certain county boards in Minnesota may appropriate out of general funds the money needed to finance zoning regulations (N. Dak. 1c; Minn. 1c). But in Michigan, special tax levies by counties and townships are authorized to carry out the zoning program (Mich. 1c, 2t).

166/ Pa. Stat. Ann. tit. 21, §§ 611-615 (Supp. 1967).
167/ La. Rev. Stat. § 9:5626 (Supp. 1964).
168/ Colo. 1c; Utah 1c; S.C. 8m.

Tax levies for county zoning purposes may not exceed one-half mill in Mississippi, but the governing body may expend the necessary sums for zoning administration from the general fund (Miss. 1c). An Oregon law authorizes formation of local zoning planning districts and commissions; it permits a levy of not more than one-fortieth of 1 percent of true cash value of all taxable property in the zoning district to pay the amount of the zoning planning budget (Oreg. 2c). Newly created area planning departments of certain Indiana counties may be financed temporarily by appropriation of sufficient funds to cover fiscal needs. "Sufficient funds" is declared to mean a sum equal to 3 cents per month for every person in the county (Ind. 3c).

CHAPTER XI.--EVALUATION AND SUGGESTIONS

The impacts of change in rural America are being experienced in submarginal farming areas, productive agricultural areas, and both the near-in and extended urban fringe. This transformation can lead toward a better future, or it can be haphazard, depending very often on decisions made or not made by the communities involved. If the change is haphazard, the result may be great waste of land, water, and other natural resources; tax resources; and human resources. Avoidable land use maladjustments and conflicts may also occur and will hinder later rational community development.

Assuming that a community wants to guide its transition and future growth toward desirable and realistic objectives, has it been given adequate planning and zoning powers by the State legislature? In yesteryears, land use transition and the need for community guidance of growth occurred mainly in cities and towns or alongside corporate boundaries. Today, land use transition is countywide and wider. Problems and objectives are broader and call for planning-zoning guidance. Problems have become more widespread geographically and include new types, such as those involving natural resources, as well as the familiar urban-oriented growth problems. The following sections consider whether rural zoning enabling legislation has kept pace with changing needs.

CHANGES IN ZONING ENABLING LEGISLATION

First used in cities, zoning ordinances and regulations were designed to accomplish specific urban jobs. Among these were the tasks of preventing a haphazard mixture of conflicting land uses and forestalling overcrowding. However, these early zoning enabling statutes conferred the required zoning powers only on certain selected classes of cities. Later, other classes of cities and towns and villages as well were granted zoning powers.

Counties were first authorized to zone only their more populous urban fringes. In some States, similar powers were conferred on populous towns or townships. In the 1930's, Wisconsin counties were empowered to zone open country in the cutover areas. Forestry-recreational zoning districts were authorized. Wisconsin was soon followed by many other States in which counties, towns, or townships were empowered to zone their respective unincorporated areas.

More States Authorize Zoning

Thirty-eight States had enacted laws that empowered any or designated classes of counties, towns, or townships to adopt rural zoning ordinances by January 1948 (12, p. 6). By January 1969, all 50 States had authorized zoning of unincorporated or rural areas. The number and kinds of governments that may zone these areas varied by State and included counties and towns or townships. Certain cities and incorporated towns, boroughs, fire districts, civic associations, authorities, sanitary districts, and a few State commissions and agencies also have been empowered to zone some unincorporated territory.

The States usually authorize zoning by any county, town or township. However, only selected counties may zone in Alabama, Delaware, Florida, Georgia, Louisiana, North Carolina, Oklahoma, and Texas (table 1 and appendix II). Most counties, towns, or townships are empowered to zone the entire area within their respective jurisdictions, except territory in incorporated municipalities. A few statutes limit zoning authority of rural governments to certain problem areas, such as the urban fringe, the roadside, or other specified local areas.

The legislative practice of ladling out zoning powers piecemeal to selected counties only (usually the more populous ones) often allows chaotic growth in the developing and problem areas of neglected counties. Another undesirable result is that zoning authority may become fragmented in rural areas. Zoning powers, for example, are sometimes granted to selected counties for zoning the roadside only, to minor civil agencies for zoning problem areas, and to cities and towns for zoning extraterritorially. Each of these agencies exercises some zoning jurisdiction over parts of the same county. It seems more appropriate to grant each county boundarywide zoning authority with express power to plan and zone any part of its unincorporated area by planning districts, as is authorized in Colorado and Utah (Colo. 1c; Utah 1c). Priority might be given to problem areas.

Zoning at More Levels of Government

Levels of government authorized to zone rural areas, from lowest to highest level, include civic associations, local service districts, precincts, towns or townships, incorporated villages, towns, cities zoning outside their boundaries, counties, and States (appendix II).

Numerous grants of zoning powers to cope with local problem areas have been made since 1948. In 14 States, enabling statutes authorize cities, towns, or villages to zone the urban fringe outside corporate boundaries 169/ for limited distances ranging from one-half to 5 miles. In seven of these States--Alabama, Alaska, Illinois, Nebraska, New Mexico, South Dakota, and Wisconsin--any municipality may zone extraterritorially. In the remaining seven States--Arkansas, Maryland, Minnesota, North Carolina, North Dakota, Oklahoma, and Tennessee--only selected municipalities may zone areas outside their city limits. All of these States, except Alaska, also empower counties to zone. Ten empower any county and the remaining three empower only selected counties.

169/ See section "Extraterritorial Zoning" in chapter II.

In 1948, only two cities in Nebraska, four in North Carolina, and one in Kentucky were empowered to zone outside their corporate limits (12, p. 8). By 1963, numerous cities, towns, and villages had such powers. Extraterritorial zoning of fringe areas extending the usual 1, 2, or 3 miles beyond city limits allows haphazard growth of easily accessible areas farther out. Suburban growth very often radiates outwards along highways for many more miles beyond city limits.

Some extraterritorial zoning statutes require joint city-county urban-fringe planning-zoning commissions. Under provisions of several statutes, the city's extraterritorial zoning jurisdiction ends when the county zones.

In 1948, Michigan, Minnesota, Wisconsin, and eight Northeastern States authorized towns or townships to zone (12, p. 9). Since then, Ohio and Vermont have granted zoning powers to any town or township, and Illinois to certain townships; North Dakota has authorized townships to zone the approaches to cities; and North Carolina has empowered Newport Township to zone the roadside along a Federal highway. 170/ Zoning by towns in Wisconsin is limited to any town in unzoned counties (Wis. 2t), to towns granted village powers (Wis. 3t); and to any town participating in a regional planning program (Wis. 4t).

Certain special districts--such as fire, water, sanitary, and public service districts--are authorized to zone in a few New England States that also empower towns to zone. 171/ A 1963 act in Texas empowers the Harris County Flood Control District to establish setback lines along waterways (Tex. 2m). These planning-zoning units usually are smaller than towns or townships.

Nearly 2 dozen laws provide for zoning by the States themselves, either directly by means of regulations or zoning ordinances adopted by the State legislature or indirectly through a State agency that is vested with zoning powers. 172/ Most of these laws deal with local problem areas--certain subdivisions, local districts, urban fringe, medical centers, or environs of State capitol buildings. Although the zoning regulations are applied at State levels, zoning objectives are as locally oriented as those of fire and other special districts, many towns or townships, and cities zoning the urban fringe outside their boundaries.

On the other hand, statewide zoning objectives are the goals of certain statutes in Alaska, Hawaii, Iowa, Louisiana, Mississippi, Rhode Island, and Wisconsin. Some of these statutes are concerned with the use made of roadsides of certain classes of highways; others with development in flood plains. A Hawaiian statute authorizes and directs a State land use commission to place all lands in Hawaii in one or another of four zones--agricultural, conservation, rural, or urban. Although these statutes confer zoning powers that permit State guidance of future land use and development in widely differing degrees, they are all limited functionally. 173/

170/ Ohio 2t; Vt. 1t; N. Dak. 2t; Ill. 3t; N.C. 34t.

171/ See section "Zoning by Special Districts" in chapter II; and appendix I.

172/ See section "Zoning by the State" in chapter II.

173/ See section "Zoning by the State" in chapter II.

As mentioned, nonfarm development has been greatest in SMSA's, especially outside the core cities. 174/ As a result, numbers of regional planning agencies have increased. Both growth and planning trends call for implementation of some aspects of a master plan at regional levels or higher. But recent trends in zoning enabling legislation apparently have gravitated toward an increasing fragmentation of zoning authority, including a vesting of zoning powers in lower and lower levels of government. Moreover, when both counties and towns or townships possess zoning powers, zoning regulations are usually applied at the latter, or lower level only.

More orderly and unified growth is promised by a Hawaiian statute which authorizes and directs the application of use regulations at the State level. Within this generalized zoning framework, the counties apply required local zoning details. 175/

Possibly, similar regional zoning objectives may be approached although not assured under provisions of statutes in Colorado, Ohio, Pennsylvania, and Michigan. These statutes provide that proposed local zoning plans or ordinances be reviewed and approved by a county, regional, or State planning agency, as the case may be. 176/ Also, one statute in Wisconsin requires zoning amendments of towns to be approved by the county board when a county zoning ordinance exists (Wis. 2t).

A different way of coordinating zoning regulations that reflect local wishes in SMSA townships is authorized by a Kansas local zoning enabling statute. The county board is to appoint seven-member zoning boards for the townships. These boards are to consist of five township residents, plus the county engineer and the township trustee as ex officio members. These zoning boards may prepare and recommend plans and maps, including a zoning ordinance which does not become effective until approved by the county board (Kans. 1c).

More Types of Authorized Zoning Districts

Zoning districts and regulations have both developed and changed since the formative days in the early decades of this century. The first zoning districts--residential, commercial, and industrial--were designed to serve urban ends. Later residential-agricultural zoning districts, the transition zones, were shaped for the urban fringe. Then came the great depression which, along with land use chaos in the cutover region of the Western Lake States, combined to trigger the shaping of forestry-recreation zoning districts and regulations.

Recent decades have brought a profusion of new types of zoning districts and regulations for both town and county. Farmers in California devised exclusively agricultural zoning districts for farming and related uses. Such districts are now found in more than a dozen States. Resource zones evolving

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174/ See section "Impacts of Land Use Change" in chapter IV.

175/ See Minn. Laws 1965, ch. 678 for an analogous law prohibiting towns from passing zoning regulations that are inconsistent with county zoning.

176/ Colo. 1c; Mich. 1c, 2t; Ohio 2t; Pa. 1c. See section "Reviewing Zoning Plans" in chapter V.

included farming, grazing, guest ranch, watershed, camp and recreation, resort, summer home, conservancy or conservation, flood plain, floodway, small farm, rural estate, and many other types.

Recent innovations in urban-oriented zoning have involved exclusive-type industrial zoning districts and industrial parks; shopping center zoning districts; cluster residential zoning and subdivisions; zoning to facilitate planned unit residential, community, and new city development; performance standards; and combining district zoning regulations.

Usually, zoning innovations appear first in forward-looking zoning ordinances. Some time later, a few zoning enabling statutes expressly authorize the new techniques and regulations. The delay tends to be greatest for zoning enabling statutes for rural areas and may have certain unhappy consequences:

1. Any zoning or effective zoning of changing rural areas may be prevented.

2. New zoning techniques and regulations for handling emerging natural resource problems and attaining resource objectives may be slow to develop.

3. More units of government may exercise zoning powers in rural areas.

4. Legal precedents rooted in an earlier and different urban environment may be enthroned.

RECENT URBAN-ORIENTED ZONING INNOVATIONS

In the last few decades, a series of urban-oriented zoning innovations have emerged, including shopping center zones; industrial park zones; performance standards; combining districts, or floating zones; and more recently, cluster zoning and subdivisions, planned residential development, and planned unit development. Other new zones are those for historic districts and those that are extraterritorial.

Only a few of the rural zoning enabling statutes expressly authorize one or more of these zoning innovations. Broad grants of power in other zoning enabling laws have been construed to permit exercise of some of these innovations. Possibly, better zoning would be furthered by more express authorizations.

Shopping Centers and Industrial Parks

Zoning districts for residences and related uses only--exclusive-type residential zones--are almost as old as zoning. But exclusive-type industrial districts for industry and facilitating uses only are quite recent, as are commercial districts set aside for shopping only. The usual commercial district permits both residences and businesses plus related uses. The typical industrial zone permits industry, plus homes and businesses, as well as uses related to each. Land uses, in other words, are cumulated.

Only a few rural zoning enabling statutes confer express power to establish exclusive-type industrial districts or analogous commercial zones. Examples of zoning enabling statutes authorizing industrial parks are found in Kentucky, Nebraska, South Carolina, and Oklahoma. The Nebraska law empowers any county board to designate rural tracts of 20 acres or more as industrial areas to be used for industrial uses only (Nebr. 3c). The Kentucky statute authorizes a variety of exclusive use districts, including planned industrial districts (Ky. 1c). In one South Carolina county, a planning and development board may be selected and empowered to designate certain rural sections as industrial areas. No business may be established in these areas without written consent of the board (S.C. 6c).

Presumably, districts only for industry can be and are being established under broad powers conferred in many rural zoning enabling statutes. Possibly, industrial development in rural areas would be furthered by granting rural governments express authority to establish zoning districts for industry and related uses only--industrial parks--in accordance with prescribed legal guidelines.

Decisions as to kinds of commercial districts to be established--exclusive or cumulative, neighborhood, community, or regional--are usually left to the local community by the zoning enabling statutes. Shopping centers are in growing favor. In a Kentucky law, planned business districts are sanctioned (Ky. 1c).

Zoning Units Becoming Smaller

Although land use problems are rapidly becoming metropolitanwide, and regional planning is becoming commonplace, smaller, fragmented units of government are increasingly obtaining zoning powers. 177/

Only towns or townships may zone in the Northeastern States, 178/ which have many metropolitan areas embracing numerous towns. In these areas, planning and land use problems are often areawide, but zoning is local. Moreover, if the State has conferred zoning powers on both counties and towns or townships, as in Pennsylvania and several Lake States, any zoning usually is done by the towns or townships.

A variety of service districts and associations, often smaller than towns or townships, may zone in seven States. 179/ Fifteen States have granted all or selected cities and towns power to zone areas outside their boundaries, usually for distances ranging from 1 to 3 miles. 180/

177/ See section "Zoning at More Levels of Government" in chapter XI.
178/ See section "Levels of Government Empowered to Zone" in chapter II and related sections.
179/ See section "Zoning by Special Districts" in chapter II.
180/ See section "Extraterritorial Zoning" in chapter II.

Area scope of zoning is limited by enabling statutes in other ways. Only selected counties or towns or townships are empowered. Or zoning is restricted to designated areas--the urban fringe, roadsides, park and water frontages, local option areas, or other problem areas. 181/ Specified local areas only are the concern of over half the 23 laws under which zoning regulations are applied directly by State agencies. 182/

State legislatures have worked hard in recent decades conferring zoning powers on governments of local areas that wanted to zone. However, in an age of regionwide growth problems, 183/ recent trends toward smaller zoning units may not be desirable. Perhaps the zoning job would be done better by government units embracing larger areas--by counties or regional agencies, as is now authorized in North Dakota (N. Dak. 4m) or by State agencies--without losing sight of local values.

State legislatures may need to give more thought to the incidence of zoning benefits and burdens (detriment), when granting zoning powers. Some benefits are largely local; others accrue to the region as a whole, or to the public at large, depending on the type of zoning regulations applied. 184/

Minor local governments are unlikely to seriously consider zoning regulations whose benefits accrue mostly to the public at large. Such regulations may be opposed, if their burden (detriment) is local. Conversely, zoning regulations that result primarily in local benefits may be slighted by a regional zoning agency.

New avenues of zoning adaptation to further larger public ends need to be considered. Perhaps the legislative authority of zoning agencies, in appropriate cases, could embrace the entire problem area. For example, if zoning benefits will be largely regional, statewide or wider zoning powers might be conferred at comparably governmental levels. But the zoning agency need receive or exercise only those powers necessary for the particular zoning jobs at hand, leaving the remainder of the zoning field to existing agencies. In other words, the zoning powers granted or used need to be comprehensive geographically but limited functionally.

Examples that may foreshadow the future are the roadside zoning statutes in several States. 185/ These grants of power, although statewide, are very limited, both as to type of regulations authorized and areas that may be zoned.

Broader statewide zoning powers have been conferred by Hawaii. The State land use commission was empowered and directed to place all land either in agricultural, conservation, and rural zoning districts or in urban zoning districts (Hawaii 5m). Only the limited "use" regulations needed for an overall land use framework were authorized. Generally, the bulk of the zoning tasks, including providing local zoning details, was left to the counties.

181/ See section "Areas That May Be Zoned" in chapter II.
182/ See section "Zoning by the State" in chapter II.
183/ See sections "Forces Causing Rural Land Use Change" and "Impacts of Land Use Change" in chapter IV.
184/ See section "Incidence of Zoning Benefits" in chapter IV.
185/ See section "Zoning by the State" in chapter II.

A Kansas statute assures townships a voice in zoning but leaves the final zoning decision with the county. Township zoning boards are empowered to prepare and adopt zoning regulations and maps but these do not take effect until approved by the county commissioners (Kans. 1c). The route suggested by the Kansas statute will probably bring more responsible zoning in metropolitan areas than would a continued fragmenting of local governments empowered to zone.

Only one example of regional or metropolitanwide zoning authority was found in the enabling statutes--North Dakota (N. Dak. 4m). Enabling legislation is sorely needed that authorizes regional and metropolitan area zoning along the lines suggested by the Kansas statute. An alternative may be to endow a State agency with zoning powers that are limited functionally, as was done in Hawaii.

Enlarging Extraterritorial Zoning Areas

Fifteen States authorize extraterritorial zoning. The width or depth of the areas outside municipal boundaries that may be zoned in this way varies considerably. Maximum widths allowed range from one-half mile to 5 miles, depending on the State and the population of the urban unit. Although widths allowed rise with increases in population, ratios are not consistent from State to State. 186/

Extraterritorial zoning is not likely to provide effective land use control in metropolitan areas of fragmented governments. Such zoning, extending outwards 3 miles, as in Lincoln and Omaha, Nebr., or 5 miles, as in Tulsa and Oklahoma City, Okla., involves too limited an area for realistic guidance of suburban growth, unless the cities are actively annexing growth areas or the counties are zoning adjacent unincorporated areas (Nebr. 4m, 6m; Okla. 5m).

It has been alleged that the absence of county zoning necessitated extraterritorial zoning in the first place; that such zoning tends to postpone zoning in counties; and that areas more distant from corporate limits often remain unzoned and grow haphazardly in mixed land uses. Whatever the reasons, extraterritorial zoning is being used and will probably be used more in the future. A rewarding task will be to find ways to make such zoning function better.

Statutes that authorize extraterritorial zoning often require fringe area representation on city-county planning commissions which prepare master plans, including zoning ordinances, for the unincorporated areas affected (N. Dak. 2t; N.C. 12m; Wis. 5m). These plans sometimes call for regional planning commissions (Tenn. 3m). Other statutes leave this planning to the city planning commission (Nebr. 5m; N.C. 21m). In Oklahoma, metropolitan planning commissions (city-county) are empowered to prepare plans for the city, 5-mile fringe areas, and the rest of the county (Okla. 6m). 187/

186/ See section "Extraterritorial Zoning" in chapter II.
187/ See section "Fringe-Area Planning" in chapter V.

Although the enabling statutes usually specify arbitrary maximum distances that extraterritorial zoning areas may extend from corporate boundaries, there is one exception. In Tennessee, cities with regional planning commissions may zone all adjacent unincorporated territory within the municipal regional planning area (Tenn. 3m). Presumably, the statute granting such power will permit zoning control over leapfrog subdivisions and ribbon growth that often radiate outwards along arterials for many miles beyond the city. Extraterritorial zoning areas around expanding urban centers need to be wide enough to prevent ruining tomorrow's growth areas with haphazard development.

Most enabling statutes grant sole authority to municipal legislative bodies to pass extraterritorial zoning ordinances. But a few exceptions are noted. Certain cities in Wisconsin may adopt 2-year interim zoning ordinances for fringe areas unilaterally. But permanent zoning ordinances which require prior approval of the joint city-fringe area planning commission may not be adopted (Wis. 5m). An Oklahoma statute requires plans for 5-mile fringe areas to be approved by both city and county, but zoning for such areas is adopted and administered by the city alone (Okla. 5m).

Under provisions of one Tennessee statute, cities may zone extraterritorially in the absence of county zoning (Tenn. 3m). But in Maryland, when certain towns adopt master plans and zoning ordinances for fringe areas, county zoning jurisdiction is ended in such areas (Md. 10m).

Most enabling laws that authorize extraterritorial zoning are relatively new. Some are probably experimental. Assuming extraterritorial zoning is here to stay, efforts need to be made to improve related enabling statutes which confer, limit, and outline such zoning powers. Present enabling laws offer many suggestions.

Encouraging Historic Zoning

A few special enabling statutes that authorize the creation of historic zoning districts have been enacted. These statutes usually prescribe acceptable standards and include provisions for review of applications for permits and of proposed plans by a historic district commission. 188/ In a few cases, historic zoning is based on powers conferred by general zoning enabling statutes.

Historic area zoning is relatively new. Educational, environmental, and economic values are preserved by such zoning. Many areas of significant historic value remain unprotected in both town and country. Protection might be provided if the needed zoning authority were at hand. Enabling powers should be clear and ample, including provision for historic area commissions. Rural legislative bodies are reluctant to act if the authority granted them by the State appears doubtful.

188/ See section "Historic and Other Districts" in chapter VI.

Providing for Performance Standards

Some industries are objectionable in residential, commercial, and agricultural zones, and in certain industrial zones as well because of noise, smoke, odor, dust, dirt, glare, heat, fire hazards, noxious gases, and traffic, or because of airborne, fluid, or solid industrial wastes.

Objectionable industries often are placed in districts away from other uses and from districts that might be harmed. But many industries are no longer bad neighbors, because their offensive qualities have been lessened or ended; these industries need not be isolated. The test is their impact on the surroundings. The extent of noise, odor, and other offensive qualities can be measured.

Cities are increasingly using performance standards to control objectional aspects of industry. But authority to adopt performance standards is seldom found in rural zoning enabling statutes. One of the few exceptions is an Indiana law which confers express authority to provide for such standards (Ind. 2c). 189/

Assuming the necessary enabling authority has been conferred, zoning ordinances can prescribe performance standards. Industries that comply would have a wider choice of possible industrial sites. However, administration may be difficult and costly for the smaller and the less populous units of rural government. In some cases, checking compliance with prescribed standards is likely to be technical and may require the services of consultants. Perhaps arrangements could be worked out between neighboring units of local government for jointly employing the needed specialists.

Authorizing Cluster Subdivisions and Other Planned Unit Zones

Some far-reaching urban-oriented innovations rarely reflected in present rural zoning enabling statutes have occurred in the past decade. Included are cluster subdivision and zoning, planned residential developments, a variety of planned unit development zones, and new-town zones. Many benefits can accrue to both town and country from creation of these new kinds of zoning districts. Rural governments should receive the facilitating enabling authority.

Cluster zoning envisions placing dwellings in clusters or groups on smaller lots than is required by customary zoning regulations. The remaining land area, assuming the same number of housing units per acre, would be reserved for common open space. This space would be available for conservation or a variety of recreational uses, as determined by the immediate homeowners.

Benefits from cluster development would accrue to developers, homeowners, and the community at large. Benefits to developers would result from greater flexibility and economy in subdivision layout, including the arrangement of dwellings to fit the topography; and from reduced lengths of streets, curbs, sewers, water, gas, and other service lines not needed in open-space areas.

189/ See section "Industrial Districts" in chapter VI.

Benefits to homeowners would come from less monotonous subdivisions; increased attractiveness and livability because of the presence of trees and other natural features; separation of pedestrian and motor traffic; and the common open-space areas, which could remain as woodlands, pastures, or water areas, or be devoted to recreational uses--such as parks, playgrounds, golf courses, and swimming pools.

Other benefits would accrue to the community at large--both urban and rural people. Attractive cluster subdivisions promise adjacent open space for the homeowner's enjoyment, more stable property values and tax base, and a lower cost of providing and maintaining streets and related facilities and services.

Other benefits would accrue to rural people. Grouping dwellings in cluster subdivisions would, presumably, preclude use of septic tanks and require sewers instead. The health menace sometimes caused by septic tanks that pollute land, groundwaters, minor drainages, and streams would be avoided. Urban sprawl, with its familiar waste of land and tax resources, also would be deterred by the dependence of cluster subdivisions on sewers. Septic tanks facilitate the scattering of nonfarm homes over the countryside where sewers are not available. This scatter, in turn, enlarges areas of urban-agricultural conflicts. 190/

Planned residential zoning and planned unit development zoning have been suggested to facilitate development of large land areas as a unit. Great flexibility is permitted in physical layout of the site, location of buildings, and building type, height, and use.

A planned development may be comprised only of residential units in a variety of housing types, or residential units plus a few service stores, or a wider range of structures and uses. 191/ Similarly, the new-town concept contemplates developments large enough to accommodate most types of uses.

All four ideas--cluster, planned residential, planned unit, and new-town--propose relief from the rigid controls imposed by traditional zoning. In place of these controls, developers would prepare preliminary and later, final plans of proposed developments. Each plan, in turn, would be submitted to the planning commission for review and suggestions; and after public hearings on one and in some cases both of two successive plans, the commission would decide.

Planned residential and planned unit development zoning exists in a few States but express provision for these types of zoning is found only in rural zoning enabling laws in Indiana, Pennsylvania, and Vermont (Ind. 1c; Pa. 1c, 1t; Vt. 2t). Rural governments in many other States may need express and ample authority to adopt zoning ordinances permitting and regulating cluster subdivisions, planned residential and planned unit developments, as well as new-town developments.

190/ See (13, pp. 18-20) for a discussion of urban-agricultural conflicts.
191/ See section "Planned Residential Development" in chapter VI.

Encouraging Cluster Housing in Rugged Areas

Nowhere are the rigidities of traditional zoning and subdivision regulations more constrictive than in areas of mountainous or rugged terrain. In such areas, cluster development would be most advantageous, whether for year-long residential uses or for part-time vacation homes. Cluster zoning and development of such terrain would permit grouping of dwellings on the suitable, flatter areas. The more rugged terrain could remain undisturbed. Open spaces thereby would be provided and scenic values protected.

The alternatives under conventional zoning are no development or development after massive grading and leveling, with a resultant destruction of native trees and other natural attractions.

RECENT RURAL-ORIENTED ZONING INNOVATIONS

A number of innovations in zoning regulations, suitable for use in open-country areas, have been developed in recent years but are reflected in only a few enabling statutes. Most significant among them are exclusively agricultural zoning districts for farming and related uses only, exemption of agriculture from zoning regulations, and a great variety of more or less specialized natural resource-oriented zoning districts. Other new methods are zoning at State levels; islandwide land use regulations, as applied in Hawaii; and roadside zoning regulations, as authorized in Louisiana, Mississippi, South Dakota, and Wisconsin.

Cumulative- Versus Exclusive-Type Farm Zones

There are two main types of agricultural zoning districts--cumulative and exclusive. Cumulative-type farm zones have existed for many years. Exclusive-type farm zones, originated by California farmers about two decades ago, have spread to more than a dozen States. 192/

In cumulative-type farm zones, agriculture and related uses are permitted and nonfarm dwellings are allowed. Many of these districts also permit a variety of business and industrial activities, often of the more distracting kinds. Nonfarm dwellings are allowed on minimum-sized lots that range by districts from one-half to 5 acres. The degree of protection for agriculture affected by these farm zones is directly related to the minimum-sized lot requirements. Small lots offer the least protection, large lots the most.

Cumulative-type farm zoning districts often serve as transition zones from agricultural to residential uses, including subdivisions. The transition is facilitated by regulations requiring small minimum-sized lots. But often, the change is hampered by an existing mixture of conflicting land uses that defies any future rational land use plan.

192/ See section "Agricultural Districts" in chapter VI.

Agriculture is the primary land use permitted in exclusive-type farm zones. Other permitted uses are secondary and accessory. Among these are a few related activities that further the use of land for farming. Also permitted are certain public and semipublic uses. Residences are allowed only as comprising an accessory use to agriculture. Nonfarm residences, nonfarm business, and industrial activities are barred.

Exclusive-type farm zones have been established for general farming purposes, as well as for more specialized agricultural activities; such as dairy, poultry, or livestock production or the growing of trees, truck, or flower crops. Minimum-sized tracts required in these zones range from 5, 10, 20, and 40 acres up to 80 acres or more, depending on the kinds of farming in the zone and the zoning ordinance involved.

Only a few rural zoning enabling statutes contain provisions expressly authorizing exclusive-type farm-zoning districts. Such statutes are found in Florida, Georgia, and Oregon. 193/ No doubt, general language in other statutes authorizes similar districts.

The Oregon statute was amended in 1963 to authorize creation of farm use zones to be used exclusively for agriculture (Oreg. 1c). A comparable special Georgia act was enacted in 1947 (Ga. 25c). Two Florida laws, one of local and the other of general application, authorize zoning and assessing as agricultural any land used exclusively for agriculture (Fla. 1c, 37c).

Exclusive agricultural zoning has been retarded, if not prevented, in many States by serious doubts at local legislative levels about the adequacy of authority to create such zones under existing zoning enabling statutes. Local doubts might be allayed and exclusively agricultural zoning encouraged by certain measures. Rural governments could be granted express power to establish exclusive-type farm zoning districts. In such districts, the governments could prescribe large minimum tracts of sizes that would be appropriate for carrying out the objectives of agricultural zones.

Limiting Exemption of Agriculture

A growing number of rural zoning enabling statutes contain provisions exempting agriculture, including farm buildings, from zoning regulations. 194/ Such exemption apparently is a legislative reaction to urban-agricultural conflicts that follow suburban encroachment into farming areas. These conflicts may increase as more and more nonfarm homes are broadly scattered among the farms. One question is whether agricultural exemptions should be withdrawn or limited.

A few States retaining agricultural exemption provisions have found ways to give a measure of zoning protection not only to agriculture but to nonfarm residents as well. Enabling statutes in Arizona and Idaho allow agricultural exemptions only for tracts containing more than 2 acres and 5 acres, respectively (Ariz. 1c; Idaho 1c).

193/ See section "Agricultural Districts" in chapter VI.
194/ See section "Exemption of Agriculture" in chapter VI.

Although an Illinois statute does not limit the agricultural exemption to larger tracts only, several zoning ordinances adopted under it define agricultural uses narrowly. Under these ordinances, agricultural uses are exempt only on tracts that are larger than 1, 3, 10, and 15 acres, depending on the ordinance (Ill. 1c). However, the Illinois statute and a Kentucky statute expressly require agriculture to observe setback regulations (Ill. 1c; Ky. 1c).

The nonconforming status of agricultural land, under provisions of a Massachusetts statute, will not be lost if the land is not used for agriculture for periods of less than 5 years (Mass. 1t).

Zoning for Wise Use of Natural Resources

One or more enabling statutes in half the States authorize zoning to further the wise use of natural resources. Zoning districts may be created to promote recreation, forestry, grazing, flood control, soil or water conservation or both, or only some of these, depending on the statute. 195/ Almost all these types of zoning districts are expressly authorized in enabling statutes in Georgia, Tennessee, and a few other States.

Most enabling statutes, as has been noted, require the zoning ordinance to be based on a comprehensive plan. 196/ The plan ought also to be comprehensive in fact as well as name. If the plan embraces both urban and rural areas, natural resource information must be considered in the planning process, especially in planning for rural areas. Information will be needed about resource problems and potentials relating to land, soils, agriculture, forestry, water, recreation, and fish and wildlife in the planning area. 197/ Rural zoning ordinances and related land use plans founded on such factual information are less likely to be voided.

Many rural zoning enabling statutes need revision so as to expressly authorize the use of zoning measures that advance rural land use objectives. 198/ Legislatures might also consider increasing the types of zoning districts expressly authorized to provide a statutory variety of open-country use districts. 199/ Such express authority may help to overcome the reluctance of some rural governing bodies to establish open-country zoning districts where fear of a lack of authority is a factor.

Finally, legislatures might define the term "comprehensive plan." The definition might suggest or require that consideration be given to natural resource information in the preparation of land use plans for rural areas.

195/ See section "Other Open Country Districts" in chapter VI.
196/ See chapter V--"Planning Required Before Zoning."
197/ See section "Planning for Both Town and Country" in chapter V.
198/ See section "Authorized Statutory Objectives of Zoning Regulations" in chapter III.
199/ See section "Use Regulations" in chapter VI.

Zoning of Water and Adjacent Areas

The question as to whether zoning jurisdiction stops at the streambank and shoreline has been resolved in Florida. Most of the State's zoning enabling statutes confer zoning jurisdiction over both land and water (see Fla. acts in app. II). A few States authorize the establishing of setback lines along streams and water bodies. Other States confer express power to regulate land use on flood plains. 200/ Grants of similar zoning powers to regulate land use in water-related areas are desirable in many other States.

More Zoning at State Level

Zoning by the State is a relatively recent zoning innovation, but one that is growing. Such zoning occurs when State interests are directly affected, when State agencies will benefit, when benefits are nonlocal, or when local zoning is ineffective. 201/ Sometimes the legislature zones directly by ordinance, as was done in Florida and a few other States. But more often, the legislature passes enabling statutes granting zoning powers to State agencies.

Some of these laws zone urban areas only. Again, the Florida laws are examples. More often, zoning by the State is concerned with both urban and rural areas. Among laws for rural areas are those concerned with roadside land use in Louisiana, Mississippi, South Dakota, and Wisconsin; use of flood plains in Iowa and Wisconsin; use of coastal wetlands and contiguous uplands in Rhode Island; land use in unorganized boroughs in Alaska, and statewide land use in Hawaii. 202/

More experimentation with State zoning, especially zoning by State agencies, is in order. For example, powers granted a State agency might be limited geographically to the problem areas, which, as in Hawaii, embrace the entire State. Similarly, the powers conferred might be limited to those needed to handle the particular situation. State zoning regulations, as in Hawaii, would provide a framework within which additional zoning regulations might be applied by local governments. Several types of areas might be suitable for further experimentation with State zoning besides roadsides; flood plains and adjacent shorelands; and coastal wetlands and contiguous uplands. These areas might include major scenic and recreational parts of mountains or seashore; borders of and land within Federal, State, and private forests or parks; and prime agricultural lands, especially those under intense and haphazard urbanization pressure.

200/ See sections "Park and Water Frontages" in chapter II and "Building Tract Regulations" in chapter VI.

201/ See section "Zoning by the State" in chapter II.

202/ See section "Zoning by the State" in chapter II.

Improving Roadside Zoning

Enabling statutes that authorize zoning of the roadside vary greatly as to the scope of zoning powers that may be exercised. Usually, roadside zoning is effected under statutes authorizing zoning that is geographically jurisdiction-wide and functionally broad. Counties and other local governments are empowered to zone the roadside as part of a general zoning plan. 203/

A few statutes limit zoning powers to roadside strips ranging in width from 200 feet to 1,000 yards on each side of designated roads or classes of roads. 204/ Zoning powers conferred by these statutes may be functionally broad (Fla. 14c), or limited to setback regulations only (Ill. 2c), as is often the case. The depth of the setback is usually left to local legislative bodies. But one Florida law requires a 30-foot setback along designated highways and streets (Fla. 22c). Other Florida laws prohibit setbacks that are deeper than 25 feet from the edge of the right-of-way (Fla. 14c) or greater than 100 feet from the center of existing or proposed highways (Fla. 48c). Statutes in Illinois and Kentucky exempt agriculture from all zoning regulations, except building setback lines (Ill. 1c; Ky. 1c).

Statutes in a few States authorize various local governments to adopt official maps showing locations of existing and proposed roads and streets. After adopting such a map, the local governing body may prohibit erection of buildings within setback lines of proposed roadways, except where a variance is granted by the board of adjustment. 205/ The official-map law in Georgia permits the granting of tax relief on lands involved. Also, the law allows purchase or condemnation of right-of-way land, including payment with funds borrowed from the State pension fund (Ga. 2c).

How can roadside zoning be made more effective? Is dependence on numerous local governments to provide effective roadside zoning realistic? Some units zone, others do not, but the road goes through; and benefits from roadside zoning accrue mostly to the traveling public rather than to roadside landowners. 206/

Is roadside zoning at a higher level of government a promising solution? Mississippi was first to move in that direction when it authorized the State highway department to establish setback lines along State highways (Miss. 2m). The same tendency is apparent in Federal statutes that have established roadside control requirements for interstate highways. These Federal controls are reflected in recent laws adopted in Louisiana, South Dakota, and Wisconsin.

203/ See sections "Areas That May be Zoned" in chapter II and "Building-Tract Regulations" in chapter VI.

204/ See section "Roadsides" in chapter II.

205/ See section "Variances as Aid in Preserving Official Maps" in chapter VIII.

206/ See section "Incidence of Zoning Benefits" in chapter IV.

Is it desirable or legally feasible to have functionally limited zoning at Federal-State levels along certain classes of highways used in interstate commerce? Such zoning has been suggested (2, pp. 259-60). The U.S. Supreme Court has upheld Federal laws restricting activities on private property which are contrary to the Federal interest. 207/

Other States could follow Mississippi's lead and grant their highway departments standby roadside zoning powers to be exercised only, if after notice and hearing, the local government fails to zone or local zoning regulations or their administration are inadequate. Zoning powers conferred might be limited to use, setback, height, design, and other regulations needed to protect roadside corridors along stated classes of highways.

Size of Lots

Authority to regulate lot size usually stems from the power to impose building-tract (area) regulations or population density regulations, or both. This power is conferred by nearly two-thirds of the enabling statutes. 208/ A few statutes expressly authorize regulation of lot sizes (Colo. 1c). These powers are usually exercised to prescribe minimum permitted lot size. Minimums prescribed vary depending on their objectives--to prevent overcrowding, to assure sanitary septic fields, to protect agriculture, or to attain other goals.

In early American cities, small lots sometimes resulted in excessive population densities. In recent years, large minimum size lot regulations have caused wasteful sprawl on the fringe of some cities. But regulations prescribing minimum lots of 5 and 2 acres have been voided as excessive by the courts in some jurisdictions. Statutes in Hawaii and Minnesota authorize regulations designating both minimum and maximum lot sizes (Hawaii 3c; Minn. 2c). Powers conferred under each of these two laws may be useful for containing sprawl.

What is the most desirable minimum size of a lot or tract? Presumably, such minimums will and should vary from place to place depending on zoning needs and objectives. Granting local governments express authority to establish both minimum and maximum permissible sizes of lots or tracts will tend to encourage desirable local experimentation with lot-size regulations.

Should State legislatures designate maximum lot or tract sizes? If they do, there should be one maximum for residential subdivisions and another much larger maximum for exclusively agricultural zoning districts. Some courts condemn residential lots of 2 acres or more. But minimum-sized tracts that range from 5, 10, 20, and 40 acres, or up to 80 acres or more, are not excessive in

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207/ McKinley v. United States, 249 U.S. 397 (1919); United States v. Alford, 274 U.S. 264 (1927); Camfield v. United States, 167 U.S. 518 at 525-526 (1897).

208/ See sections "Building-Tract Regulations" and "Population-Density Regulations" in chapter VI.

exclusively agricultural zoning districts. Large residential lots induce urban sprawl. A large minimum size for agricultural tracts, on the other hand, serves to contain urban sprawl and protect agriculture.

OTHER RECENT INNOVATIONS

Some other zoning innovations appearing in the enabling statutes include the delegation of legislative powers to planning and zoning commissions, legislative authority to grant special use permits, and limitations on successive rezoning applications involving the same property. Other enabling legislation pertains to interim zoning ordinances, zoning advisory committees, option zoning districts, junkyards, billboards, deferential taxation of agricultural and conservation land, and many other aspects. Only the first three of these innovations are evaluated here.

Zoning by Planning-Zoning Commissions

Zoning ordinances and regulations are usually adopted by the governing body--the county or town boards. However, about a dozen enabling statutes confer enacting powers on planning or zoning commissions. 209/ One Connecticut law empowers a town council to delegate authority to the planning-zoning commission to pass zoning regulations (Conn. 34t). A variation found in Hawaii would help relieve busy county boards of burdensome details of adopting and amending zoning regulations. Zoning resolutions, adopted by the planning commission, become effective within 30 days, unless disapproved or modified by concurrent vote of five of seven members of the city-county board (Hawaii 1c).

Special Use Permits or Special Exceptions

A new zoning technique, the special use permit, sometimes called special exception or conditional use permit, has been used increasingly in county zoning ordinances during the past decade. Special use permits represent an excellent technique for protecting neighboring properties from activities and uses that may be distracting unless subjected to special regulations, conditions, or safeguards. 210/

Legislation expressly authorizing special use permits is included in only a few rural zoning enabling statutes. Special use permits are used to apply special regulations to certain activities normally allowed in a district, as well as to allow under prescribed conditions activities usually found in other kinds of zoning districts.

A Missouri law, for example, in place of changing the zone, authorizes granting special use permits for certain uses, subject to conditions and safeguards (Mo. 2c). Other statutes limit special use permits to specific uses specified in the ordinance (Wash. 2c; Ohio 1c, 2t).

209/ See section "Planning-Zoning Commission" in chapter VII.
210/ See sections "Special Uses" and "Special Exceptions" in chapter VIII.

Enabling statutes have authorized and courts have sanctioned zoning on the basis of districts. Questions for the courts to resolve are whether special-use permits comply with this mandate and if such permits are legally vulnerable unless expressly authorized in zoning enabling statutes.

Special use permits allow more flexible zoning; they are precise regulatory tools that can be applied to individual properties as needed, instead of to classes of properties only. Such permits avoid the creation of numerous classes of zoning districts, many differing only slightly. In view of the value of this zoning technique and of its rapidly growing use, it seems prudent for State legislatures to expressly grant local governments the power to issue special use permits.

Successive Rezoning Petitions

Local citizens often must attend successive rezoning hearings involving the same properties. Several legislatures have taken steps to discourage this practice; such as requiring a favorable vote of two-thirds or more of the legislative body to adopt an amendment 211/ and requiring a larger favorable vote if neighboring property owners protest the proposed amendment. 212/

In Connecticut, successive rezoning petitions involving the same properties may not be heard more than once in a 12-month period (Conn. 1t). If a proposed rezoning is disapproved in Massachusetts, it may not be reconsidered within 2 years (Mass. 1t). One Maryland law requires that 18 months elapse between the first disapproval and the second rezoning application involving the same land or a portion of it. Thereafter, 24 months must elapse between each successive rezoning application in one county and 3 years must elapse in another county (Md. 7c). Similar laws might be considered by legislatures in other States.

THE NEED FOR A NEW MODEL RURAL ZONING ENABLING STATUTE

Explosive change in rural America has, as noted, brought challenging new land use problems and goals for rural governments. The change has created an urgent need for community guidance, which is often not provided. 213/ But why have so many rural governments failed to meet the challenge of change? There may be many reasons, notably the lack of adequate regulatory powers. State legislatures have delayed both adopting suitable rural zoning enabling statutes and updating them to keep pace with newly developed zoning techniques and regulatory needs of rural governments. 214/

The Standard State Zoning Enabling Act, published in 1926, has helped guide State legislatures in drafting their respective rural zoning enabling statutes for four decades (14). But the standard act was intended as a pattern

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211/ See section "Amending the Zoning Ordinance" in chapter VII.
212/ See section "If Neighbors Protest" in chapter VII.
213/ See section "Forces Causing Rural Land Use Change" in chapter IV.
214/ See section "Impacts of Land Use Change" in chapter IV.

for drafting urban zoning enabling statutes. 215/ For that purpose, and as a pattern for enabling statutes concerned with the near-in urban fringe, the standard act has served well.

Ten years after the standard act was published, a rural zoning enabling statute was published by USDA (15). The latter act suggested the granting of zoning powers to serve both urban areas and the open country. 216/

A third model zoning enabling act is needed. It should incorporate viable sections from both previous acts, include provisions which reflect recently developed zoning techniques, and contain provisions that encourage experimentation with new zoning measures for coping with emerging land use and resource problems in changing rural America.

Effects of the absence of adequate planning and zoning in rural America are obvious--haphazard growth, wasted land and water resources, conflicting land uses, cluttered roadsides, and general esthetic deterioration. Regulatory tasks ahead are immense--guiding and protecting community development in an era of explosive suburban growth; and protecting and fostering the development of natural resources, including agriculture, soil, water, forests, and fish and wildlife. Greatly improved zoning measures and techniques are needed by rural governments to do an adequate regulatory job.

To help obtain effective zoning, a knowledgeable committee of men and women could assemble and prepare a new rural zoning enabling statute that would promise more adequate zoning powers for rural America. The committee might consist of laymen, technical specialists, legislators, local officials, and association representatives. Membership should include planning and zoning technicians from both town and country, urban and agricultural economists, attorneys versed in planning and zoning law, educators, and extension specialists. Also needed would be specialists in conservation and development of such natural resources as soil, agriculture, forests, water, recreation, and fish and wildlife. Finally, the committee should include representatives from citizen's groups and associations, including women's clubs, sportsmen, farmers, labor, and businessmen, among others.

Several possible sources of information are available for the proposed model zoning enabling act. First, the committee would want to consider and incorporate many desirable provisions from the two existing model acts published by the Departments of Commerce and Agriculture. Second, many suggestions as to possible contents are included in this report, especially in the last chapter. Third, other ideas may be garnered from the discussion throughout this report of the numerous and varied provisions of the State zoning-enabling statutes. A fourth possible source of information and ideas, one not explored here, consists of urban and airport zoning enabling statutes of the States. Finally, and most important, are the ideas and suggestions to be generated by the rich experiences of members of the committee.

215/ See section "Authorized Statutory Objectives of Zoning Regulations" in chapter III.

216/ For lists of rural-oriented zoning purposes, see section "More Recent Objectives" in chapter III.

APPENDIX I: TABLES

Appendix table 1.--Number of counties in which rural zoning ordinances may be enacted, by State, January 1, 1969

State	Counties		
	Total	Empowered to zone	In which some or all towns or townships empowered to zone
	Number	Number	Number
Alabama	1/67	2	-
Alaska	-	-	-
Arizona	14	14	-
Arkansas	75	75	-
California	1/57	57	-
Colorado	1/62	62	-
Connecticut	2/8	-	8
Delaware	3	1	-
Florida	67	46	-
Georgia	159	159	-
Hawaii	5	4	-
Idaho	1/44	44	-
Illinois	102	102	3/
Indiana	92	92	-
Iowa	99	99	-
Kansas	105	105	-
Kentucky	120	120	-
Louisiana	1/62	11	-
Maine	16	-	16
Maryland	1/23	23	-
Massachusetts	1/12	-	12
Michigan	83	83	83
Minnesota	87	87	87
Mississippi	82	82	-
Missouri	1/114	114	-
Montana	1/56	56	-
Nebraska	93	93	-
Nevada	17	17	-
New Hampshire	10	-	10
New Jersey	21	-	21
New Mexico	32	32	-
New York	1/57	-	57
North Carolina	100	91	-
North Dakota	53	53	53

Note: see footnotes at end of table. Continued--

Appendix table 1.--Number of counties in which rural zoning ordinances may be enacted, by State, January 1, 1969--Continued

State	Counties		
	Total	Empowered to zone	In which some or all towns or townships empowered to zone
	Number	Number	Number
Ohio	88	88	88
Oklahoma	77	3/42	-
Oregon	36	36	-
Pennsylvania	1/66	66	66
Rhode Island	2/5	-	5
South Carolina	46	46	-
South Dakota	1/64	64	-
Tennessee	95	95	-
Texas	254	2	-
Utah	29	29	-
Vermont	14	-	14
Virginia	1/98	98	-
Washington	39	39	-
West Virginia	55	55	-
Wisconsin	71	71	71
Wyoming	1/23	23	-
Total	3,057	2,478	3/591

1/ Excludes areas corresponding to counties but having no organized county government.
2/ Includes unorganized areas bearing county designations.
3/ Data unavailable for accurate report.

Source: Governments of the United States. Vol. 1, no. 1, 1957. Census of Governments.

Appendix table 2.--Number of enabling laws that authorize various units of government to adopt zoning ordinances in unincorporated or rural areas, by State, January 1, 1969

State	Enabling laws by type of government					Total
	County	Town or township	Cities or towns	State agency	Miscellaneous	
	Number					
Alabama	2	-	1	-	-	3
Alaska	-	-	1	1	1	3
Arizona	1	-	-	-	-	1
Arkansas	1	-	1	-	-	2
California	1	-	-	-	-	1
Colorado	1	-	-	-	-	1
Connecticut	-	41	-	-	9	50
Delaware	1	-	-	-	-	1
Florida	48	-	1	7	6	62
Georgia	29	-	-	-	-	29
Hawaii	3	-	-	2	-	5
Idaho	2	-	-	-	-	2
Illinois	2	1	1	-	-	4
Indiana	4	-	1	-	-	5
Iowa	1	-	-	1	-	2
Kansas	3	-	-	1	-	4
Kentucky	3	-	-	-	-	3
Louisiana	4	-	-	1	-	5
Maine	-	2	-	-	-	2
Maryland	10	-	1	1	1	13
Massachusetts	-	2	-	-	-	2
Michigan	1	1	-	-	-	2
Minnesota	4	3	-	-	-	7
Mississippi	1	-	-	1	-	2
Missouri	4	-	-	-	-	4
Montana	1	-	-	-	-	1
Nebraska	3	-	4	-	-	7
Nevada	1	-	-	-	-	1
New Hampshire	-	3	-	-	4	7
New Jersey	-	2	-	-	-	2
New Mexico	2	-	1	-	-	3
New York	-	1	-	-	-	1
North Carolina	9	-	35	1/1	1	46
North Dakota	1	1	1	-	1	4
Ohio	1	1	-	-	-	2
Oklahoma	2	-	1	2	-	5
Oregon	2	-	-	-	-	2

Note: see footnotes at end of table. Continued--

Appendix table 2.--Number of enabling laws that authorize various units of government to adopt zoning ordinances in unincorporated or rural areas, by State, January 1, 1969--Continued

State	Enabling laws by type of government					Total
	County	Town or township	Cities or towns	State agency	Miscellaneous	
	Number					
Pennsylvania	1	2/-	-	-	-	1
Rhode Island	-	10	-	1	-	11
South Carolina	6	-	-	-	2	8
South Dakota	1	-	1	1	-	3
Tennessee	14	-	1	-	-	15
Texas	1	-	-	-	1	2
Utah	1	-	-	-	-	1
Vermont	-	2	-	-	-	2
Virginia	1	-	-	-	-	1
Washington	2	-	-	-	-	2
West Virginia	2	-	-	1	-	3
Wisconsin	1	3	1	2	-	7
Wyoming	2	-	-	-	-	2
Total	181	73	51	23	26	354

1/ Interim zoning ordinance under N.C. 11m was adopted by the State and an ordinance in final form by the town of Robersonville.

2/ Pennsylvania zoning enabling statute applies to counties, townships, and cities.

Appendix table 3.--Agricultural and other activities expressly exempted from zoning regulation by zoning enabling statutes, by State, January 1, 1969

State and code reference	Agricultural exemption			Other exempted uses, activities, or facilities
	Land	Buildings and structures	Miscellaneous provisions	
Arizona:				
1c	x	x	Grazing or general agricultural purposes on tracts of 2 acres or more	Railroads, mining, metallurgy
Arkansas:				
1c	x	x		Cost of buildings and structures
Colorado:				
1c				Facilities of public utilities, if excepted by public utilities commission
Delaware:	x	x	Art. 2, sec. 25 of Del. constitution exempts agriculture	
Idaho:				
1c	x		On tracts containing 5 acres or more	Sawmills, mines, and processing plants
Illinois:				
1c	x	x	Except setback lines must be observed	Facilities of public utilities
3t	x	x	do.	do.
Indiana:				
1c				Mineral resources and forests in rural areas
Iowa:				
1c	x	x	While used for agricultural purposes	

Continued--

Appendix table 3.--Agricultural and other activities expressly exempted from zoning regulation by zoning enabling statutes, by State--Continued

State and code reference	Agricultural exemption			Other exempted uses, activities, or facilities
	Land	Buildings and structures	Miscellaneous provisions	
Kansas:				
1c	x	x	While used for agricultural purposes	Outdoor advertising allowed in business and industrial zones
2c	x	x	do.	
3c	x	x	do.	Outdoor advertising allowed except in residential and recreational areas
Kentucky:				
1c	x	x	Agriculture includes farming, dairying, stockraising, and similar purposes; agriculture must observe setback lines	
Maine:				
1t				Utilities may be exempted by public service commission; zoning is advisory as to State
Maryland:				
3c	x		Exempts land used for agricultural purposes	
7c	x		Exempt if land used for farming or other agricultural uses exclusively	
Massachusetts:				
1t			During initial 5 years of nonuse, zoning regulations are not to be used to curtail nonconform-	Church and school properties exempt; also utilities, after hearing by department of public utilities

Continued--

Appendix table 3.--Agricultural and other activities expressly exempted from zoning regulation by zoning enabling statutes, by State--Continued

State and code reference	Agricultural exemption			Other exempted uses, activities, or facilities
	Land	Buildings and structures	Miscellaneous provisions	
			ing status of agricultural, horticultural or floricultural land	
Michigan:				
1c				Oil and gas wells
2t				do.
Minnesota:				
1c				Hunting and fishing cabins; mines, quarries and gravel pits; hydro dams and facilities; wild crops, airports
4t				Airports
Mississippi:				
1c	x	x	Permits not required for farm buildings or uses outside corporate limits	
Missouri:				
1c	x	x	May not regulate raising crops or land use for agricultural purposes, orchards or forestry; or require farm building permits	Approved public utility facilities
3c	x	x	do.	do; strip mining; commercial structures, except in residential and recreational zones

Continued--

Appendix table 3.--Agricultural and other activities expressly exempted from zoning regulation by zoning enabling statutes, by State--Continued

State and code reference	Agricultural exemption			Other exempted uses, activities, or facilities
	Land	Buildings and structures	Miscellaneous provisions	
Montana:				
1c	x		Shall not regulate lands used for grazing, horticulture, agriculture, or growing timber	
Nebraska:				
4m		x	Excepts construction for farm uses	
5m	x	x	Exempts normal farming and livestock operations	
6m		x	Exempts farmsteads (20 acres or more) from construction regulations	
New Hampshire:				
1t				Utilities after hearing by public utilities commission
New Jersey:				
1t				do.
North Carolina:				
1c	x	x	Excepts bona fide farms, but not farm property in nonfarm uses	
2c	x	x		
3c	x	x	Same as N.C. 1c	
6c	x	x	Excepts farming or agricultural operations or keeping of livestock	

Continued--

Appendix table 3.--Agricultural and other activities expressly exempted from zoning regulation by zoning enabling statutes, by State--Continued

State and code reference	Agricultural exemption			Other exempted uses, activities, or facilities
	Land	Buildings and structures	Miscellaneous provisions	
North Carolina:				
8c	x	x	Same as N.C. 1c	
9c	x	x		
12m	x	x	Same as N.C. 1c	
North Dakota				
1c	x	x	Excepts farming and normal incidents of farming	
2c	x	x	do.	
Ohio:				
1c	x	x	Agriculture includes farming, dairying, pasturage, horticulture, floriculture, viticulture, and animal and poultry husbandry	Public utility and railroad facilities
2t	x	x	do.	do.
Oklahoma:				
1c	x	x	Usual farm buildings, planting of agricultural crops	Public utilities that are subject to corporation commission
2c	x	x	do.	do., and electric cooperatives; oil and gas extraction
5m				Industrial uses in extraterritorial fringe
Oregon:				
1c	x		Exempts land within farm use zones used for grazing, agriculture, horticulture, or animal husbandry	

Continued--

Appendix table 3.--Agricultural and other activities expressly exempted from zoning regulation by zoning enabling statutes, by State--Continued

State and code reference	Agricultural exemption			Other exempted uses, activities, or facilities
	Land	Buildings and structures	Miscellaneous provisions	
Pennsylvania				
1c				Public utilities by public utilities commission after hearing
Rhode Island				
5t	x	x	Zoning that interferes with agriculture is void	
7t	x	x	do.	
8t	x	x	do.	
Tennessee:				
1c	x	x	Agricultural land and buildings exempt, but require building permits if near federally aided highways, airports, or public parks	
6c	x	x	Agricultural land and buildings exempt, except livestock and poultry enterprises in residential zoning districts	
Texas:				
1c				Telephone facilities
Vermont:				
1t				Limited exemption of public utilities, State institutions, schools, and churches
Wyoming:				
1c	x	x		Production of mineral resources

APPENDIX II:

LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969

State and code references to statutes	Units of government empowered to zone	Legal citations
Alabama: 1/		
1c	Counties having population of 400,000 or more in 1940 or succeeding Federal Census (Jefferson County)	Ala. Code app. vol. 14, §§ 970 to 985 (1960), app. vol. 14A (1966) and (Cum. Supp. 1967)--Ala. Acts 1947, nos. 344 and 649, as amended through 1967, no. 591.
2c	Shelby County	Ala. Acts 1965, no. 816.
3m	Any incorporated municipality through planning commission (urban fringe--5 miles)	Ala. Code tit. 37, §§ 786 to 798 (1958), and (Cum. Supp. 1967)--Ala. Acts 1935, no. 534 as amended through 1966, no. 429. Existence of extraterritorial zoning power suggested in Quarterly Report of Atty. Gen. of Ala., July-Sept. (1944), pp. 34-37.
Alaska:		
1c	Organized boroughs of the 1st and 2nd class	Alaska Stat. tit. 7, § 07.15.340 (1962)--Alaska Laws 1961, ch. 146, §§ 3.34, 3.31, as amended 1962, ch. 110, § 10; conferring zoning powers pursuant to Alaska Stat., §§ 29.10.207 to 29.10.243 (Michie 1962).
2m	Home-rule boroughs and cities (extraterritorial fringe)	Alaska Stat., State Const. Art. X, sec. 10 (Michie 1962). Interpreted as authorizing zoning pursuant to Alaska Stat., §§ 29.10.270 to 29.10.243 (Michie 1962), by Alaska Local Affairs Agency, Office of the Governor, in letter of Aug. 1, 1962.
3m	Department of Natural Resources (certain unorganized boroughs)	Alaska Stat. tit. 7, § 07.05.040 (1962) and (Supp. 1967)--Alaska Laws 1966, ch. 47.
Arizona:		
1c	Any county	Ariz. Rev. Stat. Ann. §§ 11.801 to 11.830 (1956) and (Supp. 1967)--Ariz. Laws 1949, ch. 58, as amended through 1963, ch. 94.
Arkansas:		
1c	Any county	Ark. Stat. Ann. §§ 17.1101 to 17.1106 (1956) and (Supp. 1963)--Ark. Acts 1937, no. 246, as amended through 1957, no. 202.
2m	Certain cities (strips along navigable streams)	Ark. Acts 1965, ch. 134.
California:		
1c	Any county	California Govt. Code Ann. §§ 65800 to 65951 (West 1955) and (Supp. 1967)--Calif. Stat. 1953, ch. 1355, as amended through 1967, ch. 366.

1/ Legal references are numbered serially by State. A number followed by "c" indicates a county enabling law; "t" town or township; and "m" miscellaneous units of government. The same designations are used in the text and tables to identify the enabling laws.

Continued--

LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Colorado:		
1c	Any county	Colo. Rev. Stat. §§ 106.2.1 to 106.2.34 (1963) (Perm. Supp. 1965 and Supp. 1967)--Colo. Laws 1939, ch. 92, as amended through 1967, chs. 51, 84, 248.
Connecticut:		
1t	Any town	Conn. Gen. Stat. Rev. §§ 8.1 to 8.13 (1966 and Supp. 1967)--Conn. Laws 1957, P.A. 13, S. 41, as amended through 1967, P.A.'s 64, 348, 383, 712, 801, 884, 896.
2m	Miscellaneous districts	Conn. Gen. Stat. Rev. § 8.1a and § 7.326 (1966)--Conn. Laws 1957, P.A. 465, S. 17; 1959, P.A. 577, S. 1, and S. 3, conferring zoning powers under general zoning stat.
3t	Any town, city, or borough (regulate removal of soil, loam, sand, and gravel)	Conn. Gen. Stat. Rev. §§ 7.148 and 7.148a (1965)--Conn. Laws 1963, P.A. 626, as amended through Feb. 1965, P.A.
4t	Any town (zones excluding business and signs)	Conn. Gen. Stat. Rev. §§ 8-14 to 8-17 (1966)--Conn. Laws 1957, P.A. 13, S. 42.
5t	Any town (car junkyards)	Conn. Gen. Stat. Rev. §§ 21.15 to 21.26 (1958) and (Supp. 1965)--Conn. Laws 1957, P.A. 438, S. 1, as amended through 1961, P.A. 581, S. 20.
6t	Any town (junk dealers)	Conn. Gen. Stat. Rev. §§ 21-9 to 21-14 (1958)--Conn. Laws 1957, P.A. 13, S. 89.
7t	Any town (gas stations)	Conn. Gen. Stat. Rev. §§ 14-318 to 344 (1966)--1949 Rev. Stat. 2535, et seq., as amended through Conn. Laws Feb. 1965, P.A.'s 52, 229, 585.
8t	Any town (historic districts)	Conn. Gen. Stat. Rev. §§ 7-147a to 7-147i (1966)--Conn. Laws 1961, P.A. 430, as amended through Feb. 1965, P.A. 221.
9t 2/	Branford, town of	Conn. Spec. Laws 1953, no. 530. Zoning authorized under general zoning stat. (includes Civic Association of Short Beach and Pine Orchard Association, if accepted by respective referenda).
10t	Cornwall, town of	Conn. Spec. Laws 1951, no. 69. Zoning authorized under general zoning stat.
11t	Darien, town of	Conn. Spec. Laws 1953, no. 596; 1957, no. 216; 1959, no. 410. Zoning authorized under general zoning stat.

2/ Connecticut Private Acts for 1963 were not available for inspection. Therefore, statutes Conn. 9t through Conn. 50m do not reflect amendments, if any, adopted that year.

Continued--

LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Connecticut:		
12t	Durham, town of	Conn. Spec. Laws 1945, no. 111; 1947, no. 158. Zoning authorized under general zoning stat.
13t	East Hartford, town of	Conn. Spec. Laws 1929, no. 501, §§ 43-45; 1939, no. 45, § 7; 1949, nos. 253, 254; 1957, no. 167.
14t	East Haven, town of	Conn. Spec. Laws 1939, no. 167. Zoning authorized under general zoning stat.
15t	Enfield, town of	Conn. Spec. Laws 1961, no. 244, superseding 1941, no. 528, §§ 52, 53, and previous acts.
16t	Farmington, town of	Conn. Spec. Laws 1945, no. 9.
17t	Glastonbury, town of	Conn. Spec. Laws 1943, no. 31; 1959, no. 569; 1963, no. 223.
18t	Greenwich, town of	Conn. Spec. Laws 1951, no. 469, superseding 1925, no. 408; 1933, no. 355; 1937, no. 337; 1939, no. 505. Zoning authorized under general zoning stat.
19t	Hamden, town of	Conn. Spec. Acts 1955, no. 625, superseding 1927, no. 132, as amended. Zoning authorized under general zoning stat.
20t	Ledyard, town of	Conn. Spec. Acts 1961, no. 169. Zoning authorized under general zoning stat.
21t	Litchfield, town of	Conn. Spec. Laws 1949, no. 273, superseding 1939, no. 182.
22t	Litchfield, town of (historic area zoning)	Conn. Spec. Acts 1959, no. 132.
23t	Lyme, town of	Conn. Spec. Laws 1941, no. 374.
24t	Manchester, town of	Conn. Spec. Laws 1945, no. 118.
25t	Milford, town of	Conn. Spec. Laws 1929, no. 169, § 7; 1931, no. 346, § 2, 1951, no. 601.
26t	Newton, town of	Conn. Spec. Laws 1953, no. 552.
27t	New Canaan, town of	Conn. Spec. Laws 1945, no. 218; 1951, no. 289; 1953, no. 220; 1955, no. 104, superseding 1931, no. 360, § 3.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Connecticut:		
28t	Orange, town of	Conn. Spec. Laws 1943, no. 205, § 4; 1945, no. 243.
29t	Portland, town of	Conn. Spec. Acts 1959, no. 398. Zoning authorized under general zoning stat.
30t	Prospect, town of	Conn. Spec. Laws 1943, no. 356.
31t	Redding, town of	Conn. Spec. Laws 1951, no. 552; 1957, no. 71. Zoning authorized under general zoning stat.
32t	Simsbury, town of	Conn. Spec. Laws 1949, no. 24; 1957, no. 463, superseding 1939, no. 102. Zoning authorized under general zoning stat.
33t	Stamford, town of	Conn. Spec. Laws 1939, no. 425; 1947, no. 260.
34t	Stratford, town of	Conn. Spec. Laws 1927, no. 240, as amended, 1935, no. 519, and repealing 1929, no. 284; and 1933, no. 7.
35t	Suffield, town of	Conn. Spec. Laws 1949, no. 528.
36t	Wallingford, town of	Conn. Spec. Acts 1957, no. 49 (art. VIII), as amended Spec. Sess. 1957, no. 6. Zoning authorized under general zoning stat.
37t	Waterford, town of	Conn. Spec. Laws 1939, no. 389.
38t	West Hartford, town of	Conn. Spec. Acts 1957, no. 562 (chs. III, XII), as amended 1959, no. 444, superseding 1925, no. 469, and later amendments.
39t	West Haven, town of	Conn. Spec. Laws 1929, no. 351.
40t	Weston, town of	Conn. Spec. Acts 1955, no. 484. Zoning authorized under general zoning stat.
41t	Westport, town of	Conn. Spec. Acts 1957, no. 348. Zoning authorized under general zoning stat.
42t	Windsor, town of	Conn. Spec. Laws 1931, no. 305.
43m	Canaan Fire District	Conn. Spec. Laws 1929, no. 159.
44m	Kent Fire Association	Conn. Spec. Laws 1937, no. 178.
45m	Mystic Fire District	Conn. Spec. Laws 1931, no. 44.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Connecticut:		
46m	Noank Fire District	Conn. Spec. Laws 1951, no. 305, as amended 1959, no. 434, repealing 1947, no. 34. Zoning authorized under general zoning stat.
47m	Pawcatuck Fire District	Conn. Spec. Laws 1925, no. 467, as amended 1935, no. 150; 1941, no. 372.
48m	Sachens Head Association	Conn. Spec. Laws 1935, no. 275, § 5.
49m	Watertown Fire District	Conn. Spec. Laws 1941, no. 216, § 18; 1943, no. 335.
50m	Black Point Beach Club Association	Conn. Spec. Laws 1961, no. 191. Zoning authorized under general zoning stat.
Delaware:		
1c	New Castle County	Del. Code Ann. tit. 9, §§ 2601 to 2623, and 1341 to 1353 (1953), (Supp. 1966)--Del. laws 1951, ch. 321, as amended through 1967, ch. 85. See Del. Const., art. II, sec. 25, as amended, Del. Laws 1965, chs. 7 and 8, empowering General Assembly to authorize zoning by Sussex, Kent, and New Castle Counties.
Florida: 3/		
1c	Any county (zoning agricultural lands)	Fla. Stats. Ann. § 193.201 (1958) and (Supp. 1968)--Fla. Laws 1959, ch. 59-226, as amended 1967, ch. 67-117, § 1.
2c	Alachua County	Fla. Spec. Acts 1947, ch. 24371, as amended or supplemented by 1953, ch. 28871; 1967, ch. 67-1087 (zoning).
3c	Baker County	Fla. Spec. Acts 1957, ch. 57-1130 (zoning).
4c	Bradford County	Fla. Spec. Acts 1963, ch. 63-1132 (zoning). 1957, chs. 57-1152, 57-1154, as amended 1959, ch. 59-1092 (zoning roadside, setback lines, junkyards).
5c	Brevard County	Fla. Spec. Acts 1957, ch. 57-1162, as amended or supplemented by 1959, chs. 59-1098, 59-1107, 59-1117, 59-1120; 1963, chs. 63-1134, 63-1141, 63-1144; 1965, ch. 65-1291 (zoning).
6c	Broward County	Fla. Spec. Acts 1955, ch. 30613, as amended, 1959, ch. 59-1158 (zoning). Fla. Spec. Acts 1953, ch. 28939 (restrict moving of condemned buildings); Fla. Spec. Acts 1961, ch. 61-599 (junkyards).

3/ When assembling materials for the Florida legal citations, the authors turned with pleasure to an excellent report prepared by C. D. Covey, Zoning & Land Use Control Authority in Florida Counties, Agr. Econ. Rpt. EC 67-5, Dept. Agr. Econ., Univ. Fla., Gainesville, Jan. 1967.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Florida:		
7c	Charlotte County	Fla. Spec. Acts 1963, ch. 63-1209 (zoning).
8c	Citrus County	Fla. Spec. Acts 1967, ch. 67-1201 (zoning). Fla. Spec. Acts 1963, ch. 63-1214 (junkyards, trash dumps).
9c	Clay County	Fla. Spec. Acts 1957, ch. 57-1225, as amended or supplemented by 1959, chs. 59-1181, 59-1182; 1961, ch. 61-2003; 1965, ch. 65-1378, 65-1412 (zoning).
10c	Collier County	Fla. Spec. Acts 1965, ch. 65-1408, as amended or supplemented by 1967, ch. 67-1246 (zoning). Fla. Spec. Acts 1963, ch. 63-1244, as amended 1967, ch. 67-1235 (junkyards).
11c	Columbia County	Fla. Spec. Acts 1955, ch. 30671 (zoning).
12c	Dade County	Fla. Const. Art. VIII, sec. 11 provides for Dade County Home Rule Charter and confers zoning powers in subsection 1.01 (a) (12).
13c	DeSoto County	Fla. Spec. Acts 1959, ch. 59-1228 (zoning). Fla. Spec. Acts 1957, ch. 57-1263 (setback lines).
14c	Duval County	Fla. Laws 1937, ch. 17833, as amended or supplemented by Fla. Spec. Acts 1945, chs. 22808, 23262; 1947, chs. 24266, 24267; 1949, ch. 25510; 1951, chs. 27059, 27521; 1953, ch. 28508; 1955, chs. 30229, 30710 (zoning). Fla. Spec. Acts 1939, ch. 19793 (setback lines, advertising, and so on).
15c	Escambia County	Fla. Spec. Acts 1965, ch. 65-1513 (zoning near Univ. of W. Fla.). Fla. Spec. Acts 1967, ch. 67-1367 (setback lines). Fla. Spec. Acts 1927, ch. 12712 (advertising signs).
16m	Santa Rosa Island Authority	Fla. Spec. Acts 1947, ch. 24500 (authority may zone part of island).
17c	Flagler County	Fla. Spec. Acts 1953, ch. 29073 (zoning).
18c	Hardee County	Fla. Spec. Acts 1965, ch. 65-1605 (zoning). Fla. Spec. Acts 1961, ch. 61-709 (setback lines).
19c	Hendry County	Fla. Spec. Acts 1967, ch. 67-1447 (zoning). Fla. Spec. Acts 1965, ch. 65-1610 (setback lines). Fla. Spec. Acts 1965, ch. 65-1609 (junkyards).
20c	Hernando County	Fla. Spec. Acts 1959, ch. 59-1337 (zone roadside).

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Florida:		
21c	Highlands County	Fla. Spec. Acts 1967, ch. 67-1466 (zoning). Fla. Spec. Acts 1961, ch. 61-905 (junkyards).
22c	Hillsborough County	Fla. Spec. Acts 1947, ch. 24592, as amended 1949, ch. 25889; 1951; ch. 27613; 1953, ch. 29131; 1961, ch. 2262; 1967, ch. 67-1473 (zoning). Fla. Spec. Acts 1959, ch. 59-1349 (setback likes). Fla. Spec. Acts 1951, ch. 26643, as amended or supplemented by 1953, ch. 28390; 1961, chs. 61-989, 61-994; 1965, ch. 65-759 (junkyards).
23m	State of Florida (certain areas near Tampa)	Fla. Spec. Acts 1937, ch. 18930 (permanent zoning ordinance).
24m	State of Florida (Virginia Park Subdivision)	Fla. Spec. Acts 1947, ch. 24580, as amended by 1949, ch. 25888 (permanent zoning ordinance).
25m	State of Florida (Sunset Park Subdivision)	Fla. Spec. Acts 1949, ch. 25887, as amended by 1951, ch. 27608 (permanent zoning ordinance).
26m	State of Florida (Golf View Subdivision)	Fla. Spec. Acts 1951, ch. 27602 (permanent zoning ordinance).
27m	State of Florida (Parkland Estates Subdivision)	Fla. Spec. Acts 1953, ch. 29126 (permanent zoning ordinance).
28c	Indian River County	Fla. Spec. Acts 1941, ch. 21310 (zoning). Fla. Spec. Acts 1953, ch. 29153 (setback lines).
29c	Lake County	Fla. Spec. Acts 1957, ch. 57-1486, as amended or supplemented by 1959, ch. 59-1471; 1961, ch. 61-2374; 1963, ch. 63-1508; 1965, ch. 65-1783 (zoning).
30c	Lee County	Fla. Spec. Acts 1961, ch. 61-2405 (zoning). Fla. Spec. Acts 1959, ch. 59-1494. Fla. Spec. Acts 1955, ch. 30933 (setback lines). Fla. Spec. Acts 1959, ch. 59-1489, as supplemented by 1961, ch. 61-2398 (junkyards).
31c	Leon County	Fla. Spec. Acts 1947, ch. 24663, as amended or supplemented by 1949, ch. 25981; 1955, ch. 30939; 1957, ch. 57-1526; 1959, ch. 59-1501; 1961, ch. 61-2416; 1963, ch. 63-1563; 1965, ch. 65-1835 (zoning). Fla. Spec. Acts 1961, ch. 21354 (roadside billboards). Fla. Spec. Acts 1965, ch. 65-1833 (junked cars).

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Florida:		
32c	Levy County	Fla. Spec. Acts 1963, ch. 63-638, as amended or supplemented by Fla. Spec. Acts 1967, ch. 67-1664 (zoning). Fla. Spec. Acts 1963, ch. 63-1568 (junkyards).
33c	Manatee County	Fla. Spec. Acts 1963, ch. 63-1599, as amended by 1967, ch. 67-1683 (zoning). Fla. Spec. Acts 1963, ch. 63-1591 (junkyards).
34m	State of Florida (Whitfield zoning district)	Fla. Spec. Acts 1949, ch. 25996 (tentative zoning ordinance).
35c	Marion County	Fla. Spec. Acts 1947, ch. 24687, as amended or supplemented by 1957, ch. 57-1563; 1959, ch. 59-1555; 1963, ch. 63-1609; 1967, chs, 67-1698, 67-1699 (zoning).
36c	Martin County	Fla. Spec. Acts 1941, ch. 21381, as amended or supplemented by 1955, ch. 30968; 1961, ch. 61-2466 (zoning).
37c	Lands zoned for agriculture	Fla. Spec. Acts 1961, ch. 61-2478 (authorizes exclusively agricultural zones).
38c	Monroe County	Fla. Spec. Acts 1961, ch. 61-2503, as amended or supplemented by 1961, ch. 61-2510; 1965, chs. 65-1910 and 65-1942 (zoning); also see Fla. Spec. Acts 1953, ch. 29300.
39c	Nassau County	Fla. Spec. Acts 1947, ch. 24734 (may zone Amelia Island). Fla. Spec. Acts 1967, ch. 67-1741 (junkyards).
40c	Oklaloosa County	Fla. Spec. Acts 1961, ch. 61-2559 (setback lines, junkyards).
41m	Oklaloosa Island Authority	Fla. Spec. Acts 1953, ch. 29336, as amended by 1961, ch. 61-2567 (authority may zone part of Santa Rosa Island).
42c	Okeechobee County	Fla. Spec. Acts 1959, ch. 1635 (zoning).
43c	Orange County	Fla. Spec. acts 1963, ch. 63-1716, as amended by 1965, ch. 65-1999; 1967, ch. 67-1831 (zoning). Fla. Spec. Acts 1961, ch. 61-1670 (junkyards).
44c	Osceola County	Fla. Spec. Acts 1961, ch. 61-1621 (setback lines).
45c	Palm Beach County	Fla. Spec. Acts 1949, ch. 26114, as amended 1955, ch. 31119; 1957, ch. 57-1691; 1959, ch. 59-1686; 1961, ch. 61-2634 (zoning). Fla. Spec. Acts 1953, ch. 29388 (setback lines). Fla. Spec. Acts 1961, ch. 61-1246 (junkyards).

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Florida:		
46c	Pasco County	Fla. Spec. Acts 1959, ch. 59-1717, as amended or supplemented by 1963, ch. 63-1764 (junkyards).
47c	Pinellas County	Fla. Spec. Acts 1949, ch. 26164, as amended by 1957, ch. 57-1730; 1965, ch. 65-2102; 1967, ch. 67-1923 (zoning).
48c	Polk County	Fla. Spec. Acts 1949, ch. 26170 authorizes zoning under Fla. Stat. ch. 176 (zoning). Fla. Spec. Acts 1957, ch. 57-1750 (setback lines). Fla. Spec. Acts 1961, ch. 61-1372 (junkyards).
49c	Putman County	Fla. Spec. Acts 1961, ch. 61-2728 (zoning). Fla. Spec. Acts 1961, ch. 61-2724 (setback lines).
50c	St. Johns County	Fla. Spec. Acts 1947, ch. 24862, as amended or supplemented by 1949, ch. 26198 (zoning).
51m	Ponte Vedra Zoning District	Fla. Spec. Acts 1965, ch. 65-2171 (authorizes Ponte Vedra Zoning District).
52c	St. Lucie County	Fla. Spec. Acts 1955, ch. 31235, as amended by 1959, ch. 1805 (zoning). Fla. Spec. Acts 1953, ch. 29494 (setback lines).
53c	Sarasota County	Fla. Spec. Acts 1955, ch. 31264, as amended or supplemented by 1957, ch. 57-1855; 1959, ch. 59-1854; 1963, chs. 63-1910, 63-1920; 1965, ch. 65-2252 (zoning). Fla. Spec. Acts 1953, ch. 28634, as amended or supplemented by 1959, ch. 59-1851; 1961, ch. 61-1121; 1965, ch. 65-2238 (junkyards).
54c	Seminole County	Fla. Spec. Acts 1957, ch. 57-1863, as amended 1959, ch. 59-1865 (zoning). Fla. Spec. Acts 1963, ch. 63-1935 (junkyards).
55m	Cities of 10,000 or more	Fla. Spec. Acts 1955, ch. 30030, as amended 1961, ch. 61-1515 (confers extraterritorial zoning powers on certain cities).
56m	State of Florida in Union County (urban fringe--1 mile)	Fla. Spec. Acts 1963, ch. 63-2009 (Prohibits business establishments near reception and medical center).
57c	Volusia County	Fla. Spec. Acts 1951, ch. 27254, as amended or supplemented by 1959, ch. 59-1955; 1961, ch. 61-2986; 1963, ch. 63-2026; 1965, ch. 65-2345 (zoning). Fla. Spec. Acts 1961, ch. 61-765 (setback lines). Fla. Spec. Acts 1961, ch. 61-756 (junkyards).

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Florida:		
58m	South Peninsula Zoning District	Fla. Spec. Acts 1949, ch. 26475, as amended or supplemented by 1951, ch. 27957; 1955, ch. 31338; 1959, ch. 59-1956; 1961, ch. 61-2714; 1963, ch. 63-2015; 1967, chs. 67-2150 and 67-2154.
59m	North Peninsula Zoning District	Fla. Spec. Acts 1955, ch. 31334, as amended by 1957, ch. 57-1926; 1961, ch. 61-2971; 1967, chs. 67-2153 and 67-2158.
60m	Bethune-Volusia Zoning District	Fla. Spec. Acts 1951, ch. 27952.
61c	Walton County	Fla. Spec. Acts 1965, ch. 65-2370 (zoning).
62c	Washington County	Fla. Spec. Acts 1961, ch. 61-2991 (zoning).
Georgia:		
1c	Each county	Ga. Code Ann. §§ 69-1201 to 69-1231 (1967)--Ga. Acts 1957, no. 358 at 420, as amended through 1967, no. 68 at 109. Counties may continue to plan and zone under special acts below or counties may elect by ordinance or resolution to operate under this general act.
2c	Counties of 300,000 or more (Fulton County official map)	Ga. Laws 1957, no. 231, at 2643, et seq.
3c	Counties of 300,000 or more (Fulton County)	Ga. Laws 1952, no. 825 at 2689, et. seq., as amended 1960, no. 918 at 3206, et seq.
4c	Counties having population of 75,000 to 100,000 in 1930 or later censuses (Bibb, DeKalb, Muscogee, and Richmond Counties)	Ga. Laws 1939, no. 281 at 403-405.
5c	Bacon County and city of Alma	Ga. Laws 1967, no. 550 at 3259-3269.
6c	Baldwin County	Ga. Laws 1956, no. 38 at 2082-2083.
7c	Bryan County	Ga. Laws 1941, no. 236 at 773-788.
8c	Camden County	Ga. Laws 1939, no. 323 at 520-533.
9c	Chatham, Bryan, Glynn, and Liberty Counties	Ga. Laws, Extra Sess. 1937-1938, no. 254 at 767-781.
10c	Counties having population of 20,120 to 20,130 in 1940 or later censuses (Cherokee County)	Ga. Laws 1941, no. 213 at 565-567.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Georgia:		
11c	Clayton County	Ga. Laws 1949, no. 56 at 223-235.
12c	Cobb County	Ga. Laws 1956, no. 2 at 2006-2020, as amended 1964, no. 1003 at 3181-3185, pursuant to Ga. Const. (1945) art III, sec. VII, para. XXIII.
13c	DeKalb County	Ga. Laws 1956, no. 407 at 3332-3356 supplementing 1943, no. 271 at 930-941, as amended 1952, no. 768 at 2614; 1967, no. 542 at 3230-3239.
14c	Counties having population of 120,000 to 145,000 in 1950 census (DeKalb County)	Ga. Laws, Extra Sess. 1937-38, no. 133 at 414-415, as amended 1939, no. 342 at 406-407; 1949, no. 442 at 1878-79; 1951, no. 103 at 78-82.
15c	Forsythe County	Ga. Laws, Nov.-Dec. Sess., 1953, no. 603 at 2375-2380.
16c	Fulton County	Ga. Laws 1951, no. 347 at 3033-3048.
17c	Gwinnett County	Ga. Laws 1955, no. 277 at 2925-2938.
18c	Glynn County	Ga. Laws, Extra Sess. 1937-38, no. 5 at 823-836.
19c	Hall County	Ga. Local Laws 1949-1950, no. 843 at 2864-2867.
20c	Henry County	Ga. Laws 1953, no. 742 at 2780-2784, pursuant to Ga. Const., art. III, sec. VII, para. XXIII.
21c	Liberty County	Ga. Laws 1941, no. 468 at 903-917.
22c	Lumpkin County (territory within 2-mile radius of Lake Lanier)	Ga. Laws 1956, no. 492 at 3497-3498.
23c	Muscogee County	Ga. Laws 1951, no. 397 at 3160-3175, conferring zoning power pursuant to Ga. Laws 1946, no. 553 at 191-203, the municipal zoning and planning law.
24c	Paulding County	Ga. Laws 1939, no. 82 at 700-703.
25c	Counties having population of 81,000 to 82,000 in 1940 or later censuses (Richmond County)	Ga. Laws 1947, no. 15 at 78-89, pursuant to art. III, sec. VII, para. XXIII of Ga. Const.

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State and code references to statutes	Units of government empowered to zone	Legal citations
Georgia:		
26c	Counties having population of 72,500 to 73,500 in 1930 or future censuses (Richmond County)	Ga. Laws 1939, no. 283 at 245-248.
27c	Spalding County	Ga. Laws 1951, no. 157 at 2494-2504.
28c	Counties having population of 24,100 to 24,200 in 1940 or future censuses (Baldwin County)	Ga. Laws 1946, no. 534 at 203-205.
29c	Sumter County	Ga. Laws 1956, no. 208 at 2682-2687.
Hawaii:		
1c	County and city of Honolulu	Hawaii Rev. Laws §§ 149-197 and 149-198 (1955) and (Supp. 1963)--Hawaii Laws 1939, ch. 242, as amended through 1959, ch. 187.
2c	County of Hawaii (authority to zone city of Hilo)	Hawaii Rev. Laws §§ 146-1, 146-9, 146-10 (1955)--Hawaii Rev. Laws § 6358.01; Hawaii Laws 1947, ch. 76, part of § 1.
3c	Any county (Hawaii, Maui, and Kauai counties)	Hawaii Rev. Laws § 138-42 (Supp. 1963)--Hawaii Laws 1957, ch. 234.
4m	State of Hawaii (Department of land and natural resources)	Hawaii Rev. Laws §§ 19-70 to 19-72 (Supp. 1963)--Hawaii Laws 1957, ch. 234.
5m	State of Hawaii (State land use commission)	Hawaii Rev. Laws §§ 98H to 98H-15 (Supp. 1963)--Hawaii Laws 1961, ch. 187, as amended 1963, chs. 2, 205, 206.
Idaho:		
1c	Each county	Idaho Code Ann. §§ 31-3801 to 31-3804 (1963) and (Supp. 1967)--Idaho Laws 1957, ch. 225, as amended through 1967, ch. 368, conferring on counties the powers granted cities by Idaho Code Ann. §§ 50-1201 to 50-1210.
2c	Counties within a 5-mile radius of or containing military or naval reservations	Idaho Code Ann. §§ 31-858 to 31-861 (1963)--Idaho Laws 1943, ch. 138.
Illinois:		
1c	Each county	Ill. Ann. Stat. ch. 34, §§ 3151 to 3162 (Smith-Hurd 1960) and (Supp. 1967)--Ill. Laws 1935, p. 689, as amended through 1967, act 430.

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State and code references to statutes	Units of government empowered to zone	Legal citations
Illinois:		
2c	Each county (setback lines)	Ill. Ann. Stat. ch. 34, §§ 3201 to 3204 (Smith-Hurd 1960)--Ill. Laws 1933, p. 421.
3t	Certain townships	Ill. Ann. Stat. ch. 139, §§ 301-317 (Smith-Hurd 1964 and Supp. 1970)--Ill. Laws 1967, p. 348, et. seq.
4m	Each municipality (urban fringe-1 to 1-1/2 miles)	Ill. Ann. Stat. ch. 24, § 11-13-1 (Smith-Hurd 1962) and (Supp. 1967)--Ill. Laws 1961, pp. 576, 3697, as amended through 1967, act 1317.
Indiana:		
1c	Any county	Ind. Ann. Stat. §§ 53-756 to 53-791 (Burns 1964) and (Supp. 1963)--Ind. Acts 1947, ch. 174, as amended through 1961, chs. 29, 70, 133.
2c	Counties having city of 1st class (Marion County)	Ind. Ann. Stat. §§ 53-901 to 53-985 (Burns 1964) and (Supp. 1967)--Ind. Acts 1955, ch. 283, as amended through 1965, ch. 434.
3c	Any county	Ind. Ann. Stat. §§ 53-1001 to 53-1098 (Burns 1964) and (Supp. 1967)--Ind. Acts 1957, ch. 138, as amended through 1967, chs. 129, 337.
4c	Counties with 90,000 to 175,000 people and containing city of more than 65,000 in last census (Delaware, Vanderburgh, and Vigo Counties)	Ind. Ann. Stat. §§ 53-801 to 53-810 (Burns 1964) and (Supp. 1967)--Ind. Acts 1953, ch. 258, as amended through 1965, ch. 97.
5m	Cities (zoning of contiguous townships not zoned by county or non-contiguous townships if city is county seat)	Ind. Ann. Stat. §§ 53-1201 to 53-1214 (Burns 1964)--Ind. Acts 1959, ch. 46, as amended 1961, ch. 238.
Iowa:		
1c	Any county	Iowa Code Ann. §§ 358A.1 to 358A.26 (1949) and (Supp. 1968)--Iowa Acts 1947, ch. 184, as amended through 1965, ch. 374.
2m	Natural resources council (flood plain zoning by State)	Iowa Code Ann. §§ 455A.35 to 455A.39 (1949, Supp. 1968)--Iowa Laws, chs. 372, 373, 374.
Kansas:		
1c	Certain counties	Kan. Gen. Stat. Ann. §§ 19-2901 to 19-2913 (1964) and (Supp. 1967)--Kan. Laws 1939, ch. 165, as amended through 1965, ch. 177.
2c	All counties	Kan. Gen. Stat. Ann. §§ 19-2914 to 19-2926 (1964) and (Supp. 1967)--Kan. Laws 1939, ch. 164, as amended through 1965, ch. 178.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Kansas:		
3c	Any county having a 1st- , 2nd- , or 3d-class city (urban fringe of zoned cities)	Kan. Gen. Stat. Ann. §§ 19-2927 to 19-2937 (1964) and (Supp. 1967) Kan. Laws 1951, ch. 239, as amended through 1963, ch. 195.
4m	State executive council (State zoning area near capitol grounds)	Kan. Gen. Stat. Ann. §§ 75-3619 and 75-3620 (1964) and (Supp. 1967)--Kan. Laws 1955, ch. 377, as amended through 1967, chs. 457 and 458.
Kentucky:		
1c	Any county	Ky. Rev. Stat. §§ 100.111 to 100.991 (Baldwin 1967, Cum. Issue)--Ky. Acts 1966, chs. 172 and 116.
2c	Adjacent counties, one of which contains city with population of 50,000 to 200,000 in last census (area planning commissinn)	Ky. Rev. Stat. §§ 147.610 to 147.990 (1962) and (1968 Cum. Issue)--Ky. Acts 1960, ch. 248, as amended 1968, ch. 152, § 110 and ch. 168.
3c	Any county (may zone 6th-class cities)	Ky. Acts 1964, ch. 139.
Louisiana:		
1c	Any parish (garages and service stations)	La. Rev. Stat. tit. 32, §§ 531 to 534 (1963)--La. Acts 1928, no. 275.
2c	Parishes of Jefferson, East Baton Rouge, West Baton Rouge, Calcasieu, Rapides, Bossier, St. Tammany, St. Bernard, and Caddo (Caddo Parish, only the 5-mile fringe around Shreveport)	La. Stat. Ann. Const. Art. 14, sec. 29(a) to 29(e) (West 1955) and (Supp. 1967)--added by La. Acts 1946, no. 404 through 1962, nos. 519, 527, 529.
3c	Parish of St. Charles	La. Acts 1964, no. 301.
4c	Parish of St. John the Baptist	La. Acts 1966, no. 434.
5m	State highway department (roadside)	La. Stat. Ann. Const. Art. b, sec. 19.3--added by La. Acts 1966, no. 552. Also see La. Acts 1966, no. 474, the enabling statute.
Maine:		
1t	Any town	Me. Rev. Stat. Ann. ch. 30, §§ 4951 to 4957 (1965) and (Supp. 1967)--Me. Laws 1957, ch. 405, as amended through 1967, chs. 349 and 401.
2t	Any town (historic districts)	Me. Rev. Stat. Ann. ch. 30, §§ 4958 (Supp. 1967)--Me. Laws 1967, ch. 433.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Maryland:		
1c	Any county	Md. Ann. Code art. 66B, tit. 2, §§ 21 to 23, 34 to 37 (1967 Ed.) and (Supp. 1967)--Md. Laws 1933, ch. 599, as amended through 1967, chs. 79, 236, and 535.
2c	Each chartered county	Md. Ann. Code art. 25A, §§ 5(A) (U) (X) (1966)--Md. Laws 1959, ch. 614; 1962, ch. 36, § 2.
3c	Anne Arundel County	Md. Code of Public Local Laws, title "Anne Arundel County," subtitle "zoning," art. 2.--Md. Laws 1947, ch. 426, as amended. Md. Laws 1961, ch. 724 allows group housing in county on tracts of 30 acres or more subject to stated restrictions.
4c	Baltimore County	Md. Code of Public Local Laws, title "Baltimore County," subtitle "Building Regulations," and "Public Works," subheading "zoning," art. 3.--Md. Laws 1945, ch. 502, as amended.
5c	Carroll County	Md. Code of Public Local Laws, title "Carrol County," subtitle "Planning and Zoning," art. 7.--Md. Laws 1953, ch. 644.
6c	Howard County	Md. Code of Public Local Laws, title "Howard County," subtitles "zoning" and "Trailer Camps," art. 14.--Md. Laws 1948, ch. 19, as amended through 1967, ch. 181.
7c	Montgomery and Prince Georges Counties (Maryland-National Capital Park and Planning Commission)	"Laws of the Park and Planning Commission" (1968), published by Md.-National Capitol Park and Planning Commission--Md. Laws 1959, ch. 78, as amended 1963, chs. 524, 630; 1965, ch. 187, 873, § 79 (j); 1965, ch. 898, § 79 (e), (i), (j); 1967, chs. 307, 659; 1968, ch. 625.
8c	St. Mary's County	Md. Code of Public Local Laws, title "St. Mary's County," subtitle "zoning," art. 19.--Md. laws 1947, ch. 685.
9m	La Vale zoning district in Allegany County (zoning by district board)	Md. Code of Public Local Laws, title "Allegany County," subtitle "La Vale Zoning District," art. 1, §§ 337-A to 337-F.--Md. Laws 1957, ch. 228; 1959, ch. 300.
10m	Any incorporated town in Talbot County (urban fringe--1 mile)	Md. Ann. Code art. 66B, § 21(g)(1967).
11m	State of Maryland (1-mile radius beyond towns or villages in Kent County)	Md. Laws 1955, ch. 54.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Maryland:		
12c	Certain counties--Ann Arundel, Carroll, Cecil, Charles, Frederick, Harford, Howard, Kent, Montgomery, Prince Georges, Queen Annes, and St. Marys (historic area zoning)	Md. Ann. Code art. 66B, §§ 38 to 50 (1967 Ed.)--Md. Laws 1963, ch. 874, as amended through 1968, ch. 162.
13c	Code counties	Counties to issue zoning permits as provided in art. 25, § 3 (s) (1) (Supp. 1967)--Md. Laws 1967, ch. 650, Md. Ann. Code art. 25B, § 13 (Supp. 1967) authorizes Harford, Frederick, and Kent Counties.
Massachusetts:		
1t	Any town	Mass. Ann. Laws ch. 40A, §§ 1 to 22 (1966) and (Supp. 1967)--Mass. Laws 1954, ch. 368, as amended through 1966, chs. 26, 199.
2t	Any town (historic districts)	Mass. Ann. Laws ch. 40C, §§ 1 to 13 (1966)--Mass. Laws 1960, ch. 372, as amended 1966, ch. 525.
Michigan:		
1c	Any county	Mich. Stat. Ann. §§ 5.2961(1) to 5.2961(32) (1958) and (Supp. 1968)--Mich. Laws 1943, no. 183, as amended through 1964, no. 80.
2t	Any organized township	Mich. Stat. Ann. §§ 5.2963(1) to 5.2963(31) (1958) and (Supp. 1968)--Mich. Laws 1943, no. 184, as amended through 1966, no. 106.
Minnesota:		
1c	Any county in which there is located, now or hereafter, a State or Federal forest or a State conservation area	Minn. Stat. Ann. §§ 396.01 to 396.21 (1947)--Minn. Laws 1939, ch. 340. See Minn. Stat. Ann. ch. 282 (1947) and (Supp. 1967) on tax-forfeited land sales.
2c	Any county having less than 300,000 in population	Minn. Stat. Ann. §§ 394.21 to 394.37 (Supp. 1963)--Minn. Laws 1959, ch. 559, as amended through 1965, ch. 678, 1967, ch. 1.
3t	Any town	Minn. Stat. Ann. § 366.182 (1966), adopting by reference §§ 366.11 to 366.18 (1966)--Minn. Laws 1959, ch. 566.
4t	Any town in a county having population over 450,000 and assessed tangible value over $280 million; any town bordering city of 1st, 2nd, 3d, or 4th class or bordering county containing 1st- , 2nd- , or 3d-class city; and any town having a hospital within its borders	Minn. Stat. Ann. §§ 366.10 to 366.181 (1966)--Minn. Laws 1939, ch. 187, as amended through 1965, ch. 51, sec. 73.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Minnesota:		
5t	Any town in county with population over 450,000 and assessed tangible value over $280 million; and any town within 10 miles of city of 1st class	Minn. Stat. Ann. §§ 368.56 to 368.95 (Supp. 1966)--Minn. Laws 1941, ch. 362, as amended through 1949, ch. 231.
6c	Mower County (Austin urban fringe--5 miles; and certain other areas)	Minn. Laws 1959, ch. 101, as amended 1965, ch. 349.
7c	Certain counties containing 1st- or 2nd-class cities	Minn. Stat. Ann. §§ 394.06 to 394.17 (1947) and (Supp. 1967)--Minn. Laws 1941, ch. 210, as amended 1945, ch. 551, 1947, ch. 361.
Mississippi:		
1c	Each county	Miss. Code Ann. § 2890.5 to 2890.5-08 (1956) and (Supp. 1966)--Miss. Laws 1956, ch. 197, as amended 1960, ch. 402 and 1964, ch. 231--conferring zoning powers under Miss. Code Ann. §§ 3590 to 3597 (1956) and (Supp. 1966)--1926, ch. 308, as amended through 1962, ch. 553.
2m	State highway commission	Miss. Code Ann. § 8038 (n) (1956) and (Supp. 1966)--Miss. Laws 1958, ch. 369.
Missouri:		
1c	All counties of 1st class	Mo. Ann. Stat. §§ 64.010 to 64.160 (Vernon's 1966)--Mo. Laws 1941, p. 481, as amended 1945, p. 1327, and 1949, H.B. 2020. See Mo. Const., art. 6, sec. 18(c), which grants planning, zoning, and related powers in county charters.
2c	All noncharter class 1 counties	Mo. Ann. Stat. §§ 64.211 to 64.295 (Vernon's 1966)--Mo. Laws 1959, S.B. nos. 309, 72.
3c	Any county of 2nd or 3d class	Mo. Ann. Stat. §§ 64.510 to 64.690 (Vernon's 1966)--Mo. Laws 1951, p. 406, as amended through 1963, p. 117.
4c	Any county of 2nd, 3d, and 4th class	Mo. Ann. Stat. §§ 64.800 to 64.905 (Vernon's 1966)--Mo. Laws 1965, H.B. 453; 1969, H.B. 670.
Montana:		
1c	Any county	Mont. Rev. Codes Ann. §§ 16-4101 to 16-4107 (1967--Mont. Laws 1953, ch. 154.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Nebraska:		
1c	Any county	Neb. Rev. Stat. § 23-114 to 23-114.05 (1967 Cum. Supp.)--Neb. Laws 1941, ch. 48, as amended through 1967, ch. 117, ch. 87.
2c	Counties containing a city of primary class (Lancaster County)	Neb. Rev. Stat. §§ 23-114 to 23-114.05, 23-164, 23-165, 23-168 to 23-174.10 (1943), (Supp. 1967)--Neb. Laws 1941, ch. 131, as amended through 1967, ch. 117.
3c	Any county, on petition filed to designate an industrial area	Neb. Rev. Stat. §§ 19-2501 to 19-2508 (1962), (Supp. 1967)--Neb. Laws 1957, ch. 51, as amended through 1967, ch. 99.
4m	Cities of metropolitan class (Omaha, urban fringe--3 miles)	Neb. Rev. Stat. §§ 14-401 to 14-419 (1962)--Neb. Laws 1925, ch. 45, as amended through 1967, ch. 430.
5m	Cities of 1st class (urban fringe--2 miles)	Neb. Rev. Stat. §§ 16-901 to 16-904 (1962)--Neb. Laws 1957, ch. 28, as amended 1967, chs. 66 and 70.
6m	Cities of primary class (Lincoln, urban fringe--3 miles)	Neb. Rev, Stat. §§ 15-901 to 15-904 (1962) and (Supp. 1967)--Neb. Laws 1929, ch. 49, as amended through 1965, ch. 40.
7m	Cities of 2nd class and villages (urbar fringe--1/2 mile)	Neb. Rev, Stat. §§ 17-1001 (Supp. 1967)--Neb. Laws 1957, ch. 37, as amended 1967, chs. 70 and 75.
Nevada:		
1c	Any county	Nev, Rev. Stat. §§ 278.010 to 278.310 and § 278.570 (1967)--Nev. Laws 1941, ch. 110, as amended through 1963, ch. 339.
New Hampshire:		
1t	Any town	N. H. Rev. Stat. Ann. §§ 31:60 to 31:89 (1955) and (Supp. 1967)--N.H. Laws 1925, ch. 92, as amended through 1967, chs. 216 and 233.
2t	Any municipality (junkyards)	N. H. Rev. Stat. Ann. §§ 267:1 to 267:3 (1966) and (Supp. 1967)--N.H. Laws 1939, ch. 50, as amended through 1967, ch. 372.
3m	Rye Water District	N. H. Laws 1949, ch. 428 grants zoning powers under general laws.
4m	North Walpole Village Precinct	N. H. Laws 1949, ch. 399 grants zoning powers under general laws.
5m	Contoocook Fire Precinct	N. H. Laws 1959, ch. 359, conferring zoning powers under general town laws.
6m	Hopkinton Village Precinct	N. H. Laws 1959, ch. 359, conferring zoning powers under general town laws.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
New Hampshire:		
7t	Any town (historic area zoning)	N. H. Rev. Stat. Ann. §§ 31:89-a to 31:89-j (Supp. 1967)--N. H. Laws 1963, ch. 178.
New Jersey:		
1t	Any township	N. J. Stat. Ann. §§ 40:55-30 to 40:55-51 (1967)--N. J. Laws 1928, ch. 274, as amended through 1966, ch. 228.
2t	Any township	N. J. Stat. Ann. §§ 40:55-22 to 40:55-29 (1967)--N.J. Laws 1917, ch. 215, as amended through 1922, ch. 238.
New Mexico:		
1c and 1m	Any county and municipality (municipal extraterritorial zoning within platting jurisdiction)	N. M. Stat. Ann. §§ 14-20-1 to 14-20-24 (Supp. 1967)--N. M. Laws 1965, chs. 206, 300, as amended 1967, ch. 121.
2c	Any county and municipality (historic districts)	N. M. Stat. Ann. §§ 14-21-1 to 14-21-5 (Supp. 1967)--N. M. Laws 1967, ch. 300.
New York:		
1t	Any town	N. Y. Town Law, §§ 261 to 284 (1965) and (Supp. 1967)--N. Y. Laws 1909, ch. 63, as amended through 1967, chs. 348, 412,and 529.
North Carolina:		
1c	Any county (excepting 9 named counties	N. C. Gen. Stat. §§ 153-266.10 to 153-266.22 (1964) and (Supp. 1967)--N. C. Laws 1959, ch. 1006; as amended through 1967, chs. 518, 521, and 1208.
2c	Counties having 2 or more cities each with 35,000 or more people	N. C. Gen. Stat. §§ 153-251 to 153-266 (1964)--N. C. Laws 1957, ch. 416.
3c	Carteret County	N. C. Laws 1959, ch. 1033.
4c	Craven County	N. C. Laws 1949, ch. 455; as amended 1951, ch. 757.
5c	Dare County (rural zoning areas)	N. C. Laws 1951, ch. 1193.
6c	Durham County	N. C. Laws 1949, ch. 1043.
7c	Forsyth County (rural area) and city of Winston-Salem (urban fringe--3 miles)	N. C. Laws 1947, ch. 677; as amended 1953, ch. 777; 1965, ch. 951; 1967, ch. 916.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
North Carolina:		
8c	Iredell County (Cowans Ford Lake--3-mile fringe)	N. C. Laws 1959, ch. 908.
9c	Perquimans County (Rural planning and zoning areas)	N. C. Laws 1957, ch. 1435.
10m	Sanitary districts contiguous to any incorporated town and located within 3 miles of 2 other cities or towns	N. C. Gen. Stat. § 130-128 (18) (1964) and (Supp. 1967)--N. C. Laws 1949, ch. 1145; as amended 1961, ch. 669, conferring powers under municipal zoning law, N. C. Gen. Stat. §§ 160-172 to 160-181.1 (1964) and (Supp. 1967).
11m	Robersonville, town of (zoning by State)	N. C. Laws 1957, ch. 1201.
12m	Cities and incorporated towns of 1,250 or more in selected counties (urban fringe--1 mile)	N. C. Gen Stat. § 160-181.2 (1964) and (Supp. 1967)--N. C. Laws 1959, ch. 1204; as amended through 1965, ch. 160, authorizing extraterritorial zoning.
13m	Belmont, city of (urban fringe--1 mile)	N. C. Laws 1965, ch. 776, authorizing extraterritorial zoning.
14m	Carrboro, town of (urban fringe described by metes and bounds)	N. C. Laws 1963, ch. 122; as amended 1963, ch. 636, conferring extraterritorial zoning powers.
15m	Chapel Hill, city of (urban fringe described by metes and bounds)	N. C. Laws 1961, ch. 87, V sub. E; as amended 1965, ch. 278; incorporating 1953, ch. 527, as amended and conferring extraterritorial zoning powers.
16m	Charlotte, city of (urban fringe described by metes and bounds)	N. C. Laws 1955, ch. 123; 1957, ch. 510; 1959, ch. 114, conferring extraterritorial zoning powers.
17m	Cherryville, town of (urban fringe--1 mile)	N. C. Laws 1967, ch. 22, conferring extraterritorial zoning powers.
18m	Chocowinity, town of (urban fringe--1 mile)	N. C. Laws 1967, ch. 44, conferring entraterritorial zoning powers.
19m	Dallas, town of (urban fringe--1 mile)	N. C. Laws 1965, ch. 776, conferring extraterritorial zoning powers.
20m	Drexel, town of (urban fringe--1 mile)	N. C. Laws 1967, ch. 149, conferring extraterritorial zoning powers.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
North Carolina:		
21m	Elizabeth City (urban fringe--1 mile, excepting Camden County)	N. C. Laws 1957, ch. 1450; as amended 1963, ch. 24, conferring extra-territorial zoning powers.
22m	Farmville, town of (urban fringe--1 mile)	N. C. Laws 1951, ch. 441, conferring extraterritorial zoning powers.
23m	Gastonia, city of (urban fringe--1 mile)	N. C. Laws 1963, ch. 486; rewriting 1949, ch. 700, conferring extra-territorial zoning powers.
24m	Glen Alpine, town of (urban fringe--1 mile)	N. C. Laws 1967, ch. 684, conferring extraterritorial zoning powers.
25m	Greensboro, city of (urban fringe--1 mile)	N. C. Laws 1959, ch. 1137, V sub. D; as amended 1963, ch. 55, conferring extraterritorial zoning powers.
26m	Goldsboro, city of (urban fringe--1 mile)	N. C. Laws 1961, ch. 447, art. 17; as amended 1963, ch. 328, conferring extraterritorial zoning powers.
27m	High Point, city of (urban fringe area)	N. C. Laws 1955, ch. 861; as amended 1959, ch. 190, conferring extraterritorial zoning powers.
28m	Hillsborough, town of (urban fringe--1 mile)	N. C. Laws 1967, ch. 246, granting extraterritorial zoning powers.
29m	Jacksonville, city of (urban fringe--1 mile)	N. C. Laws 1955, ch. 563, conferring extraterritorial zoning powers under municipal zoning stats.
30m	Kinston, city of (urban fringe--1 mile)	N. C. Laws 1961, ch. 92, conferring extraterritorial zoning powers.
31m	Mebane, town of (urban fringe described by metes and bounds)	N. C. Laws 1967, ch. 246, granting extraterritorial zoning powers.
32m	Mooresville, town of (urban fringe--1 mile)	N. C. Laws 1951, ch. 336, conferring extraterritorial zoning powers.
33m	Murfreesboro, town of (urban fringe--1 mile)	N. C. Laws 1959, ch. 737, conferring extraterritorial zoning powers.
34t	Newport Township (600 ft. both sides of U. S. 70 within Carteret County)	N. C. Laws 1951, ch. 1001, conferring zoning powers under municipal zoning stats.

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State and code refrrences to statutes	Units of government empowered to zone	Legal citations
North Carolina:		
35m	Raleigh, city of (urban fringe--1 mile)	N. C. Laws 1949, ch. 540, conferring extraterritorial zoning powers.
36m	Roanoke Rapids (urban fringe--1 mile)	N. C. Laws 1965, ch. 872, conferring extraterritorial zoning powers.
37m	Salisbury, city of (urban fringe described by metes and bounds)	N. C. Laws 1957, ch. 872, conferring extraterritorial zoning powers.
38m	Snow Hill, town of (urban fringe--1 mile)	N. C. Laws 1957, ch. 207, conferring extraterritorial zoning powers.
39m	Spencer, town of (urban fringe--1 mile)	N. C. Laws 1957, ch. 959, conferring extraterritorial zoning powers.
40m	Statesville, city of (urban fringe--1 mile)	N. C. Laws 1951, ch. 238; as amended 1957, ch. 1212; N. C. Laws 1959, ch. 667, art. XX, conferring extraterritorial zoning powers.
41m	Tarboro, town of (urban fringe--1 mile)	N. C. Laws 1949, ch. 1192, conferring entraterritorial zoning powers.
42m	Tryon, town of (urban fringe--1 mile)	N. C. Laws 1959, ch. 635, conferring extraterritorial zoning powers.
43m	Wallace, town of (urban fringe--1 mile)	N. C. Laws 1965, ch. 958, conferring extraterritorial zoning powers.
44m	Williamston, town of (urban fringe--1 mile)	N. C. Laws 1965, ch. 717, conferring extraterritorial zoning powers.
45m	Wilson, city of (urban fringe--1 mile)	N. C. Laws 1965, ch. 24, conferring extraterritorial zoning powers.
46m	Zebulon, town of (urban fringe--1 mile)	N. C. Laws 1961, ch. 77, conferring extraterritorial zoning powers.
North Dakota:		
1c	Any county	N. D. Cent. Code §§ 11-33-01 to 11-33-20 (1960)--N. D. Laws 1955, ch. 119.
2t	Any townships	N. D. Cent. Code §§ 58-03-11 to 58-03-15 (1960) and (Supp. 1967)--N. D. Laws 1953, ch. 340; as amended 1961, ch. 373.
3m	Any municipality (urban fringe subject to platting jurisdiction)	N. D. Cent. Code §§ 11-35-01 and 11-35-02 (Supp. 1967)--N. D. Laws 1967, ch. 105.
4m	Any regional metropolitan planning commission	N. D. Cent. Code §§ 54-34.1-01 to 54-34.1-15 (Supp. 1967)--N. D. Laws 1963, ch. 351 (Commission may by agreement be granted power to establish and enforce zoning regulations).

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Ohio:		
1c	Any county	Ohio Rev. Code Ann. §§ 303.01 to 303.25 and § 303.99 (Page 1953) and (Supp. 1967)--Ohio Laws 1947, p. 597; as amended through 1965, vol. 131, p. 189, effective Nov. 5, 1965.
2t	Any township	Ohio Rev. Code Ann. §§ 519.01 to 519.99 (Page 1953) and (Supp. 1967)--Ohio Laws 1947, p. 597; as amended through 1968, vol. 132, S.B. 234, effective May 7, 1968.
Oklahoma:		
1c	County containing 50 percent of area of city of not less than 180,000 population	Okla. Stat. Ann. tit. 19, ch. 19A, §§ 863.1 to 863.48 (1962) and (Supp. 1968-1969)--Okla. Laws 1955, pp. 164-174; as amended through 1965, ch. 350.
2c	Any county containing a city of 5,000 to 100,000 population or having upstream terminal port and turn around or any part of a reservoir built by U.S. Army Corps of Engineers or Grand River Dam Authority (urban fringe--3 miles miles; highway strip--1/4 mile; water reservoirs--1/2 mile; all or any part of unincorporated area)	Okla. Stat. Ann. tit. 19, ch. 19A, §§ 866.1 to 866.34 (1962) (Supp. 1968-1969)--1957, pp. 128-139; as amended through 1965, ch. 403.
3m	State of Oklahoma (medical center improvement and zoning commission)	Okla. Stat. Ann. tit. 70, §§ 1307.1 to 1307.14 (1966)--Okla. Laws 1953, pp. 387-389, as amended 1957, p. 522. (Repealed and superseded by Okla. Laws 1970, ch. 327).
4m	State of Oklahoma, (capitol improvement and zoning commission)	Okla. Stat. Ann. tit. 73, §§ 83 to 83.11 (1967), (Supp. 1968-1969)--Okla. Laws 1953, pp. 404-407; as amended through 1967, ch. 209. (Repealed and superseded by Okla. Laws 1970, ch. 327).
5m	Cities of not less than 180,000 (Oklahoma City, Tulsa, urban fringe--5 miles)	Okla. Stat. Ann. tit. 19, ch. 19A, § 863.19 (1961)--Okla. Laws 1955, § 19 at p. 171.
Oregon:		
1c	Any county	Ore. Rev. Stat. §§ 215.010 to 215.233, 215.990 (1967)--Ore. Laws 1947, ch. 537, as amended through 1967, chs. 386 and 589.
2c	Any county (zoning districts)	Ore. Rev. Stat. §§ 215.285 to 215.460, 215.990 (1967)--Ore. Laws 1947, ch. 558; as amended through 1963, chs. 9 and 619.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Pennsylvania:		
1c and t	Any county and township	Pa. Stat. Ann. tit. 53, §§ 10.101 to 11.202 (Purdon 1956) and (Supp. 1969)--Pa. Laws 1968, no. 247.
Rhode Island:		
1t	Any town	R. I. Gen. Laws Ann. §§ 45-24-1 to 45-24-21 (1956) and (Supp. 1967)--R. I. Laws 1921, ch. 2069; as amended 1967, ch. 173.
2t	Any town (noxious trades)	R. I. Gen. Laws Ann. §§ 23-24-1 to 23-24-13 (1956) and (Supp. 1967)--R. I. Laws 1896, ch. 93; as amended through 1967, chs. 59 and 107.
3t	Any town (historic area zoning)	R. I. Gen. Laws Ann. §§ 45-24.1-1 to 45-24.1-9 (Supp. 1967)--R. I. Laws 1959, ch. 131; as amended through 1965, ch. 239.
4t	Johnston, town of	R. I. Laws 1935, ch. 2233; as amended 1952, ch. 3010; 1959, ch. 170.
5t	Narragansett, town of	R. I. Laws 1928, ch. 1277; as amended 1967, ch. 16.
6t	New Shoreham, town of	R. I. Laws 1953, ch. 3125.
7t	North Kingstown, town of	R. I. Laws 1948, ch. 2079.
8t	South Kingstown, town of	R. I. Laws 1928, ch. 1298; as amended 1950, ch. 2490; 1967, ch. 53.
9t	Westerly, town of	R. I. Laws 1922, ch. 2299; 1925, ch. 746; 1930, ch. 1686.
10t	West Warwick, town of	R. I. Laws 1933, ch. 2065; 1966, ch. 10, repealing § 10.
11m	Department of Agriculture and Conservation (Coastal wetlands)	R. I. Laws 1965, ch. 140.
South Carolina:		
1c	Any county	S. C. Code Ann. §§ 14-351 to 14-384 (1962) and (Supp. 1967)--S. C. Acts 1942, no. 681, p. 1631; as amended through 1966, no. 846, p. 2163 and no. 967, p. 2335.
2c	Any county	S. C. Code Ann. §§ 14-350 to 14-350.27 (Supp. 1967)--S. C. Laws 1967, no. 487, p. 863.
3c	Any county	S. C. Code Ann. §§ 14-391 to 14-399.6 (1962) and (Supp. 1967) S. C. Acts 1951, no. 69, p. 85; as amended through 1967, no. 155, p. 214.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
South Carolina:		
4c	Beaufort County (Beaufort, Sheldon, and St. Helena Townships)	S. C. Code Ann. §§ 14-400.71 to 14-400.116 (1962)--S. C. Acts 1959, no. 294, p. 532, and 1960, no. 871, p. 2007.
5c	Greenwood County (unincorporated portion of Greenwood Metropolitan District)	S. C. Code Ann. §§ 14-400.311 to 14-400.324 (1962)--S. C. Acts 1960, no. 702, p. 1677.
6c	Lexington County (planning and development board)	S. C. Code Ann. §§ 14-400.401 to 14-400.410 (1962)--S. C. Acts 1956, no. 867, p. 2103; as amended through 1960, no. 573, p. 1519, and no. 856, p. 1988.
7m	Hanahan Public Service District	S. C. Code Ann. §§ 14-400.131 to 14-400.132 (1962)--S. C. Acts 1954, no. 550, p. 1429; as amended 1960, no. 957--granting zoning powers conferred by S. C. Code Ann. §§ 14-395 to 14-398, 14-399 to 14-399.6 (1962).
8m	North Charleston Consolidated Public Service District	S. C. Acts 1957, no. 521, p. 870; consolidating No. Charleston Public Service District--S. C. Acts 1948, no. 811, p. 1996; and St. Philips and St. Michaels Public Service District--S. C. Acts 1948, no. 812, p. 2004; and conferring on the consolidated district zoning powers formerly granted the respective districts.
South Dakota:		
1c	Each county	S. D. Laws 1967, ch. 20.
2m	Incorporated municipalities (urban fringe--3 miles)	S. D. Laws 1966, ch. 145, § 45.3318.
3m	State legislature (zoned certain areas commercial along interstate and primary highways)	S. D. Laws 1967, ch. 118.
Tennessee:		
1c	Any county (includes historic zoning)	Tenn. Code Ann. §§ 13-401 to 13-416 (1955) and (Supp. 1967)--Tenn. Acts 1935, ch. 33; as amended 1957, ch. 306; 1965, ch. 222.
2c	Any county (community planning districts of not more than 10 sq. mi. and not less than 500 people)	Tenn. Code Ann. §§ 13-210 to 13-212 (1955)--Tenn. Acts 1939, ch. 158, conferring zoning powers under Tenn. Code Ann. §§ 13-701 to 13-710 (1955).
3m	Any municipality except those in Gibson County (fringe planning area and flood plain and historic areas)	Tenn. Code Ann. §§ 13-711 to 13-716 (1956) and (Supp. 1967)--Tenn. Acts 1959, ch. 217; as amended through 1967, ch. 11, authorizing extraterritorial zoning.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Tennessee:		
4c	Counties having population of over 300,000 in 1930 or later censuses (Davidson and Shelby Counties)	Tenn. Private Acts 1931, ch. 613; as amended by Tenn. Private Acts 1935, ch. 707; 1937, ch. 377; and 1955, ch. 353.
5c	Counties having population of 29,200 to 29,250 in 1930 or later censuses (Carter County)	Tenn. Private Acts 1937, ch. 903.
6c	Counties having population of 200,000 to 250,000 in 1930 or later censuses (Davidson County)	Tenn. Private Acts 1939, ch. 473; as amended 1947, ch. 288; 1951, ch. 246.
7c	Counties having population of 159,000 to 200,000 in 1930 or later censuses (Hamilton County)	Tenn. Private Acts 1939, ch. 460.
8c	Counties having population of 12,200 to 12,250 in 1930 or later censuses (Johnson County)	Tenn. Private Acts 1937, ch. 904.
9c	Counties having population of 300,000 or more in 1930 or later censuses (Shelby County)	Tenn. Private Acts 1935, ch. 625; as amended 1945, ch. 131; 1953, ch. 309; 1961, ch. 410; 1965, ch. 240.
10c	Counties having population of 51,080 to 51,125 in 1930 or later censuses (Sullivan County)	Tenn. Private Acts 1937, ch. 520.
11c	Counties having population of 12,675 to 12,725 in 1930 or later censuses (Unicoi County)	Tenn. Private Acts 1937, ch. 902.
12c	Counties having population of 45,800 to 45,850 in 1930 or later censuses (Washington County)	Tenn. Private Acts 1937, ch. 901.
13c	Counties having population of 59,250 to 59,275 in 1950 or later censuses (Anderson County)	Tenn. Private Acts 1955, ch. 416.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Tennessee:		
14c	Counties having population of 41,035 to 41,055 in 1950 or later censuses (Greene County--regulation of junkyards near places of worship)	Tenn. Private Acts 1959, ch. 340.
15c	Counties having population of 36,200 to 36,250 in 1960 or later censuses (Sumner County--regulation of junkyards)	Tenn. Private Acts 1961, ch. 302.
Texas:		
1c	Cameron and Willacy Counties (area within 2 miles of parks or beach on Padre Island)	Tex. Rev. Civ. Stat. art. 2372-ℓ (Vernon's 1964)--Texas Acts 1953, ch. 246.
2m	Harris County Flood Control District (building setback lines authorized)	Tex. Rev. Civ. Stat. art. 8280-120a (Vernon's Supp. 1967)--Tex. Acts, 1963, ch. 118.
Utah:		
1c	The respective counties	Utah Code Ann. §§ 17-27-1 to 17-27-27 (1962)--Utah Laws 1941, ch. 23, as amended through 1953, ch. 27.
Vermont:		
1t	Any town	Vt. Stat. Ann. tit. 24, §§ 3001 to 3027 and § 3028 (1967) and (Supp. 1968)--Vt. Laws 1951, no. 76; as amended through 1967, nos. 283, 334. Authorizes enforcement of ordinances adopted before chapter was repealed.
2t	Any town	Vt. Stat. Ann. tit. 24, §§ 4301 to 4304 and 4401 to 4473 (Supp. 1967)--Vt. Laws 1967, no. 334 (adjourned sess).
Virginia:		
1c	Any county	Va. Code Ann. §§ 15.1-486 to 15.1-503 (1950) and (Supp. 1968)--Va. Acts 1962, ch. 407, as amended through Va. Laws 1968, chs. 407, 543, 595, and 652.
Washington:		
1c	Any county	Wash. Rev. Code §§ 35.63.010 to 35.63.120 (1965) and (Supp. 1967)--Wash. Laws 1935, ch. 44; as amended through 1967, 1st Extraordinary Sess., ch. 144.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969--CONTINUED

State and code references to statutes	Units of government empowered to zone	Legal citations
Washington:		
2c	Any county	Wash. Rev. Code §§ 36.70.010 to 36.70.940 (1963) and (Supp. 1967)--Wash. Laws 1959, ch. 201; as amended through 1965, 1st Extraordinary Sess., ch. 24.
West Virginia:		
1c	Every county	W. Va. Code Ann. §§ 8-5-1 to 8-5-72 (1966) and (Supp. 1967)--W. Va. Laws 1959, ch. 118; as amended through 1967, ch. 105. (Repealed by W. Va. Laws 1969, ch. 86).
2c	Any county (zoning within flood control areas)	W. Va. Code Ann. § 8-16-1 (1966)--W. Va. Laws 1955, ch. 130. (Repealed by W. Va. Laws 1969, ch. 86).
3m	State (zoning near radio astronomy facilities)	W. Va. Code Ann. §§ 37A-1-1 to 37A-1-6 (1966)--W. Va. Laws 1956, 1st Extraordinary Sess., ch. 2.
Wisconsin:		
1c	Any county	Wis. Stat. Ann. §§ 59.97, 59.971 and 59.99 (West 1957) and (Supp. 1968)--Wis. Laws 1923, ch. 388; as amended and supplemented through 1967, ch. 77.
2t	Any town in unzoned counties	Wis. Stat. Ann. §§ 60.74 and 60.75 (West 1957) and (Supp. 1968)--Wis. Laws 1947, ch. 224; as amended through 1965, ch. 252.
3t	Any town granted village powers	Wis. Stat. Ann. § 60.74 (7)(West 1957)--Wis. Laws 1947, ch. 224; as amended, granting zoning powers under Wis. Stat. Ann. § 61.35 pursuant to § 62.23.
4t	Any town participating in regional planning program	Wis. Stat. Ann. § 60.74 (8)(West 1957)--Wis. Laws 1955, ch. 149, granting towns participating under Wis. Stat. Ann. § 60.29(41) zoning powers pursuant to § 62.23.
5m	Any city or village with planning commission and zoning ordinance (Urban fringe--1-1/2 to 3 miles)	Wis. Stat. Ann. §§ 62.23(7a) and 66.32 (West 1957) and (Supp. 1968)--Wis. Laws 1963, ch. 241.
6m	State department of resources development (flood plains and shorelands)	Wis. Stat. Ann. §§ 87.30 and 59.971 (Supp. 1968)--Wis. Laws 1965, ch. 614, §§ 22, 31.
7m	State legislature (restricts billboards in "zone of regulation" along interstate highways)	Wis. Stat. Ann. § 84.30 (Supp. 1968)--Wis. Laws 1959, ch. 458.

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LEGAL BIBLIOGRAPHY OF STATE ENABLING LEGISLATION EMPOWERING COUNTIES, TOWNS OR TOWNSHIPS, OR OTHER LOCAL GOVERNMENTAL UNITS TO ENACT RURAL ZONING REGULATIONS, JANUARY 1, 1969

State and code references to statutes	Units of government empowered to zone	Legal citations
Wyoming:		
1c	Any county	Wyo. Stat. Ann. §§ 18-289.1 to 18-289.9 (Supp. 1967)--Wyo. Laws 1959, ch. 85; as amended, 1967, ch. 202.
2c	Any county (urban fringe sanitary zone--1 to 3 miles)	Wyo. Stat. Ann. §§ 18-281 to 18-289 (1957)--Wyo. Laws 1955, ch. 232.

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